PETITIONS AND REPLY

TO THE

CHARGES PREFERRED AGAINST

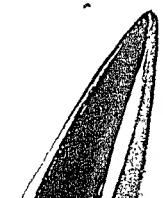
THE

HON. E. B. WOOD, C.J.,

PROVINCE OF MANITOBA.

PRINTED BY ORDER OF PARLIAMENT.

OTTAWA:
PRINTED BY MACLEAN, ROGER & CO., WELLINGTON STREET.
1882.



PETITIONS

In reference to the charges preferred against the Hon. Edmund Burke Wood, Chief Justice of the Province of Manitoba—and a Copy in full of the Answer to the said Petitions by Chief Justice Wood.

To the Honorable the House of Commons in Parliament assembled.

The Petition of the undersigned inhabitants of the Province of Manitoba, humbly sheweth:

That a Commission was issued by His Honor the Lieutenant Governor under the Great Seal of the Province of Manitoba on the 28th of October last, under which an enquiry was instituted into the administration of justice in that Province, as to infants' lands and estates.

That a large amount of evidence was taken before the Commissioners so appointed.

That a learned counsel was retained by the Attorney-General of the Province, to marshal the evidence before the said Commissionrs and report upon the same.

That, accordingly, an exhaustive report was made by the said learned counsel to the Attorney-General upon the proceedings and evidence taken under the said Commission:—

Your Petitioners most respectfully allege that the grossest mal-administration of justice has been committed by the Hon. Edmund Burke Wood, Chief Justice of the Province of Manitoba as proved in the evidence before the said Commissioners.

Your Petitioners, therefore, humbly pray that your Honorable House will cause an enquiry to be made into the truth of their allegation, and adopt such means as to your Honorable House may seem meet to preserve the integrity of the Bench of Justice in our Province, that it may possess the confidence of the community, and be above suspicion as one of the greatest blessings to be enjoyed by any people, especially by those inhabiting a new and sparsely settled Province.

And, as in duty bound, will ever pray.

EDWARD ELLIOTT.
W. GIBBENS.
W. F. McCREADY.

March 6th, 1882.

CANADA.

To the Honorable the House of Commons of the Dominion of Canada in Parliament assembled.

The Petition of the undersigned living or having interests in the Province of Manitoba, most respectfully sheweth to your Honorable House:

That the conduct of the Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, residing at Winnipeg in the said Province, is and has been for years past characterized by very serious misconduct and injustice and by acts of a nature to completely destroy all confidence in him as Judge of the Court of Queen's Bench, of suitors and all other classes of people in the said Province of Manitoba, to wit:

That the said Hon. Burke Wood, Chief Justice of the Court of Queen's Bench of the Province of Manitoba, did deliberately and in a most illegal and unjust manner in the case of the Queen *vs.* Louis Riel *et al.*, without the knowledge or consent of the Clerk of the Crown of the said Court of Queen's Bench or of the defendant's counsel, alter and change the dates in certain documents and records of the said Court of Queen's Bench, then in the custody of the Clerk of the Crown and Prothonotary of the said Court, and did thereby procure an illegal outlawry of Louis Riel and others.

That the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench of the Province of Manitoba, at the City of Winnipeg, in the said Province, in the month of August, A. D. 1874, did, deliberately, corruptly, illegally and personally, prepare, assist others in preparing and cause to be prepared, a list of names of French half-breeds to serve as petit jurors at the then next approaching term of the said Court of Queen's Bench to be held in October, 1874, at which Court one Ambroise Lepine and others were to be tried on indictment for murder; and the said Hon. Edmund Burke Wood illegally and corruptly selected and placed, and caused to be selected and placed on such list the names of such French half breeds only as were well known to be the declared enemies of the said Lepine, and the others who were to be tried for murder as aforesaid; and the said Hon. Edmund Burke Wood did himself hand such list so illegally selected and prepared as aforesaid to the Sheriff of the Province of Manitoba, and ordered him to summon as many as he could find of the persons whose names were on said list and such order was obeyed, and the said Lepine was tried by a jury composed of his enemies, empanelled from said list so illegally prepared, and was found guilty of murder, and upon such finding was sentenced to death by the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench of the Province of Manitoba.

That your petitioners do not pretend to say whether the said Lepine was innocent or not of the murder for which he was to be tried; your petitioners pretend only that his trial should have been a legal, fair and impartial one such as all have confidence in obtaining before a British Court of Justice.

That the Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, is so notoriously partial, dishonest and unjust in his judgments and decisions that suitors in the said Court know and feel that their rights are not safe, and the people of the Province of Manitoba have no confidence in, or respect for, the judgments and decisions of the said Hon. Edmund Burke Wood, and have lost all confidence in, and respect for, the administration of justice in the Province so long as the said Chief Justice Wood shall continue to preside in any of the Courts of Justice of the said Province.

That the said Hon. Edmund Burke Wood is in the constant habit of introducing local and Dominion politics into his charges to Grand Jury, and of taking an active part in politics, local and Dominion, and did so more conspicuously than usual during the last local election at Winnipeg when, in a barber's shop, in the presence of a number of people, the said Hon. Chief Justice Edmund Burke Wood made a most violent attack on the character of one of the candidates then seeking election.

That the said Hon. Edmund Burke Wood, in his charges to the Grand Jury for the Province of Manitoba, at the Spring Assizes of 1880, declared that he had no confidence in the oath of any of the French native population of the Province, and as a natural consequence of such a declaration a large and important class of the population of the Province of Manitoba has lost all confidence in the impartiality of the Chief Justice and can entertain no hope of fair or impartial justice before him.

That the suitors of the Province of Manitoba have lost all confidence in the administration of justice by the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the said Province, by reason of the evident and notorious partiality of the Hon. Chief Justice in the exercise of his judicial functions in favor of certain members of the Bar of Manitoba practising before him, some of such members of the Bar being his own near relatives, a partiality so very notorious and so clearly proved in the eyes of the public that a large number of litigants abandoned their own attorneys, and in self-defence felt compelled to employ the said members of the Bar so favored by him, or retained in addition to their attorneys so favored by him, admitting openly that they so acted, because those members of the Bar had full empire over the Judge and that he made them gain their cases.

That the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, is in the constant habit of receiving at his own private house in Winnipeg, persons who go to him to ask for his legal opinion and advice in matters affecting their interests and which must naturally come afterwards

before the said Hon. Chief Justice Wood as a Judge of the Court of Queen's Bench for trial; that he gives his opinion and even recommends such persons so consulting him as to what attorney they should retain and warns them against retaining other attorneys who are not his favorites.

That the said Hon. Edmund Burke Wood, Chief Justice for the Court of Queen's Bench for the Province of Manitoba, is in the constant habit of using the most abusive language towards both suitors and members of the Bar of Manitoba, in open Court and in Chambers, and of displaying such uncontrolable infirmities of temper and bursts of passion whilst acting as a Judge, and to disgust all parties who are so unfortunate as to be compelled to submit to his abuse, insults and injustice.

That the said Honorable Edmund Burke Wood is in the habit of taking the unsworn statement of persons on the streets or at his private residence in preference to the sworn testimony of sworn witnesses in Court and of giving such unsworn statement more credence than the testimony of sworn witnesses, and that he did so more particularly in the case of Sinclair *vs.* McDonald *et al.*, in October, 1880, and was exposed through the public press for so doing.

That the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, was guilty of gross injustice and partiality towards the Defendant's in the case of Hogan *vs.* Manning *et al.*, in which case the Plaintiff was represented by the said Chief Justice's own son and his nephew Messrs. Biggs & Wood, attorneys and barristers of Winnipeg, and prevented the Defendant's having any chance of appealing from his decision by preventing the short-hand reporter from taking the evidence, so that the Defendant's had only his, the Chief Justice's notes of the evidence to rely upon in a matter involving about five thousand dollars.

That the said Honorable Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, in his character of Judge of the County Court of Manitoba, illegally and deliberately caused to be summoned McDonald *et al.*, in the case of McAdams *vs.* McDonald *et al.*, at eleven o'clock in the forenoon of a certain day in October, 1879, and in defiance of all law and usage gave judgment against the Defendant's, and caused an execution to issue against the said Defendants' before one o'clock in the afternoon of the same day, and the bailiff of the County Court was in the act of removing Defendant safe from their office within three hours after the pretended service of the summons to appear, thereby very seriously damaging the credit and standing of the firm of McDonald, Manning & Co., who were and are contractors for the construction of Section (16) of the Canadian Pacific Railway.

That the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, has therefore been charged by the Government of Manitoba with degrading the administration of justice by his unseemly conduct and gross exhibition of intemperance while in circuit as a Judge of the County Court, on the road and at Portage LaPrairie, in the County of Marquette, in the said Province of Manitoba. That the charge hereby referred to was solemnly made by the Lieutenant-Governor in Council of the said Province, and was duly forwarded to the Minister of Justice for Canada.

That by the aforesaid acts of injustice, conspiracy, partiality and arbitrariness by the aforesaid changing and alteration of a record in the custody of the Crown Office and a record of the Court in a very important, serious and criminal proceedings in which the life and liberty of the parties implicated might depend, and by the corrupt preparation or packing of the petit jury list to try men for murder, and by his degradation of the administration of justice, the said Hon. Edmund Burke Wood has completely destroyed all confidence and respect in his regard, and that he has rendered himself entirely unworthy of exercising any longer the honorable, sacred and august functions of Chief Justice of the Court of Queen's Bench of the Province of Manitoba.

Your petitioners declare and pray you to believe that it is most painful to them to be obliged in the interests of justice to adopt this mode of proceeding, as it must be always very painful to British subjects to acknowledge, much more

to expose, the fact that there is corruption on the Bench. The suitors, members of the Bar and people of the Province of Manitoba know the facts, and yet have been deterred from preferring charges for fear of the vengeance of the said Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, should he succeed in escaping the charges made against him. The facts aforesaid, if they are not all within the personal knowledge of your petitioners, are most of them matters of public notoriety, and have come to the knowledge of your petitioners in such a manner as to render them worthy of credit and belief.

That your petitioners are in a position to prove that all the facts and complaints above set forth are susceptible of undeniable proof.

Wherefore your petitioners pray your honorable House to take this their petition into favorable consideration and deal therewith in conformity to law and justice and the interests of the pure administration of justice and the public service.

And your petitioners as in duty bound will ever pray.

HENRY J. CLARKE, Q. C.
W. BOYLE, Farmer, South Dufferin.
T. J. BRADLEY, J. P.
J. E. COOPER.

WINNIPEG, MAN., January 3rd, 1881.

RETURN

(106)

To an ADDRESS of the HOUSE OF COMMONS, dated 13th February, 1882:—

For a Copy in full of the Answer of Honorable Edmund Burke Wood, Chief Justice of the Province of Manitoba, to the Petition of Henry J. Clarke, Q. C., of Winnipeg, and others, presented to the House of Commons 4th March, 1881, said Answer being reputed to contain fourteen chapters.

By Command,

J. A. MOUSSEAU,
Secretary of State.

Department of the Secretary of State,
24th March, 1882.

INTRODUCTION.

16th August, 1881.

To the Governor General in Council.

May it please Your Excellency in Council,—

I have examined the charges preferred against me in my official capacity as Chief Justice of Manitoba, in a petition purporting to be subscribed by Henry J. Clarke, Q.C., F. T. Bradley, Johnson E. Cooper and William Boyle, a copy of which has been transmitted by the Hon. Secretary of State for Canada, for my perusal and observation in the order in which they are presented in the petition.

The petition naturally divides itself into fourteen paragraphs, and I have accordingly, in considering it, separated it into fourteen chapters, making each chapter the subject of separate observations.

I have endeavored to be as brief as a full exposition and explanation of each substantive accusation would, in my judgment, admit. The gravity of the charges, and the importance to myself personally, and the vast considerations involved in a public point of view in this petition, as affecting the independence of the Judiciary and of the Bench, and the free, impartial and pure administration of justice in all Canada, must be my excuse for the length at which my observations have extended.

It has occurred to me that it would be in the public interest that Your Excellency in Council should, at once, have my answer, with all the papers annexed (with a proper index, making easy reference to salient points and to documents in different parts of my observations) ready to be distributed to members in the Houses of Parliament, and that the same should, on the meeting of Parliament, be promptly transmitted to both Houses for their consideration, along with the petition. I make this suggestion, however, with deference, feeling confident that Your Excellency in Council will receive it in the spirit in which it is offered, and fully appreciating that to Your Excellency in Council, in a pre-eminent degree, belongs the protection of an independent and pure administration of justice in an enlightened system of jurisprudence, which is the greatest interest of man on earth, and which underlies the frame work of human society, and forms the ligament that binds and holds civilized communities and civilized nations together.

In my view, the interests of society in general in this matter so far transcend all considerations of individuals, as to imperatively demand that the petitioners should establish the allegation of facts in the petition by irrefragable testimony, or stand before the world convicted by the judgment of Parliament, as dastardly calumniators, and be condemned to that ignominy, disgrace and punishment which so vile and wanton an abuse of the right of petition deserves.

It is most respectfully submitted that it is no light thing, by a formal petition to the great Court of Parliament, thus to assail a Chief Justice of a Province and the administration of justice over which he presides; and aside from all private consideration, public interests of the greatest magnitude demand at the hands of the Government and of the Parliament of Canada, according to the constitution of the land, a prompt and speedy vindication of the truth, and a punishment of the guilty. In the manner I have ventured to suggest it is most respectfully submitted that this end may be promptly attained; for in my observations and appended documents is contained a full and complete demonstration of the willful, malicious and false insinuations and accusations in the whole petition.

All of which is, nevertheless, most respectfully submitted.

E. B. WOOD, Chief Justice.

CHAPTER I.

Observations on the first paragraph of Mr. Clarke's petition.

"The petition of the undersigned, living or having interests in the Province of Manitoba, most respectfully showeth to your honorable House:

"That the conduct of the Hon. Edmund Burke Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, residing at Winnipeg, in the said Province, is and has been for years past characterized by very serious misconduct and injustice and by acts of a nature to completely destroy all confidence in him as Judge of the Court of Queen's Bench, of suitors and all other classes of people in the said Province of Manitoba, to wit:

"That said Hon. E. B. Wood, Chief Justice of the Court of Queen's Bench of the Province of Manitoba, did deliberately in a most illegal and unjust manner in the case of Louis Riel, *et al.*, without the knowledge or consent of the Clerks of the Crown of said Court of Queen's Bench or of defendant's counsel, alter and change the dates in certain documents and records of said Court of Queen's Bench, then in the custody of the Clerk of the Crown and Prothonotary of said Court, and did thereby procure illegal outlawry of Louis Riel and others."

Certainly from the 10th February, 1875, till I received a copy of this petition I have never seen the papers in the Queen *vs.* Riel, nor had I the slightest intimation of any such charge as that made against me till I learned it from that petition. Since, I have examined the papers as they are filed in the office of the Court of Queen's Bench. The whole charge is wanton and malicious and without the slightest foundation in fact, as the papers themselves will demonstrate.

I came to this Province and assumed my official duties as Chief Justice about the middle of June, 1874. I found Mr. Clarke to be then the Attorney-General, and Mr. Daniel Carey the clerk in the office of the Court of Queen's Bench, who, under powers conferred upon him by statute, and by his friend the Attorney-General, as Clerk of the Crown and Peace, managed the criminal business, how and in what manner the records now in the office will give but a faint idea. In the interest of public justice, I found it to be my duty to exercise a constant and watchful supervision over all criminal proceedings.

In the month of July, Mr. Clarke, as leader of the Government, was defeated in the Legislative Assembly and resigned and a new Government was formed, and shortly after Mr. Clarke left the Province and went to California and did not return to this Province until in the autumn of 1877. Mr. Carey, as a rule, continued to manage the Crown business chiefly under my supervision, and, in so far as I know, very creditably. From him I learned, shortly after I came here, that proceedings in outlawry for the murder of Thomas Scott were going on against Louis Riel, who, on an indictment for murder having been found against him by the Grand Jury in the preceding November, had fled the country. I did not profess to know, nor did I in fact know, nor was I familiar with the practice of such proceedings; and on looking into the matter I did not then well see, nor do I now well see, how outlawry can, with our Courts constituted as they were then and are now, with no separate county judicial organizations and no sheriff's county courts held at short intervals as in England, nor any places that would answer the "hustings" in the practice as settled in England, be prosecuted to a successful termination.

As it appears by the papers in the case, a *capias* had been issued by Mr. Carey on the 19th November, 1873, and an *alias capias* on the 10th February, 1874, and a *pluries capias* on the 10th June, 1874 (fac simile copies of which are herewith enclosed with the sheriff's returns thereon marked respectively A, B and C). They do not purport to be issued by the authority of the Attorney-General or any other prosecutor on behalf of the Crown. That issued on the 10th of June, 1874, purports to be, and no doubt was, issued after I came here, but I have no recollection of being spoken to about it, but no doubt if I had been I would have ordered the writ to go. The test of each of these writs was on the day of the statutory term of the sittings of the Court of Queen's Bench, as it was called, for the hearing and trial of all matters civil and criminal.

According to my recollection, as refreshed by an examination of the papers, my attention was not called to this matter till some time in October, 1874. On looking into the matter, I recollect that I saw that nearly a year had already been consumed in these outlawry proceedings, and that, according to the regular practice in England, situated as we were in this Province, I did not well see how we could get on so that the proceedings would be of any avail in law. Already considerable expense to the Province, as I understood, had been incurred; but upon the whole I did not feel justified in ordering the proceedings to be abandoned. Mr. Carey, on the return of the *pluries capias*, had issued the writ of *exigent*, returnable the first of Hiliary Term, 1875 (a Statute having been passed in 1874 establishing terms for the sittings of the Court, and a Court of Assize), and a writ of *capias cum proclamatione*. I examined these writs, as I felt it my duty to do, and I looked carefully into the practice in such cases as it was in England, there being no cases to which I could refer in this country. I thought best to conform as nearly as it possibly could be done, in our existing judicial *status* to the practice, as settled by Statute in England. We had in Manitoba a Court of Queen's Bench, which then, by the third section of 38 Vic., chap. 12, of this Province, was authorized to sit as a Court of Oyer and

Terminer, &c., and of Assize and *Nisi Prius*, three times in each year for the whole Province, on the tenth days of February, June and October respectively, which embraced within its jurisdiction all matters cognizable by, or within the jurisdiction of, the Court of Quarter Sessions of Peace, in a county in England. We then had also five County Courts, as they were called—the County Court of Selkirk, the County Court of Lisgar, the County Court of Provencher, the County Court of Marquette East, and the County Court of Marquette West.

According to Gude's Crown Practice, Vol. 2, p. 166, form of writ *cum proclamatione*, it appeared to me that one of the Courts at which the *exigent* should be made was the General Quarter Sessions of the Peace; and on looking at the Statutes, and the construction which the Courts had put upon them, I thought it safest that the writs should be so framed, and as the Queen's Bench, sitting as a Court of Oyer and Terminer, &c., was in fact for this Province a Court equivalent to the Court of Quarter Sessions of the Peace in England, I came to the conclusion that one proclamation should be made to the Court of Queen's Bench, sitting as a Court of Oyer and Terminer.

The writ of *exigent*, as drafted by Mr. Carey, ran thus: "We command you that you cause to be exacted Louis Riel, late of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, from County Court to County Court, until he shall be outlawed, according to the law and custom of England, if he shall not appear."

In the amendment I made to this form, the writ ran and now is: "We command you that you cause to be exacted Louis Riel, late of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, from County Court to County Court ('for four successive County Courts, and then at the succeeding Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*, the last being the *quinto exactus*,') until he shall be outlawed, according to the law and custom of England, if he shall not appear, &c." I have underscored and put in parenthesis the only amendment (except as after mentioned) I made to the writ; and on the margin of the writ opposite the amendment, I find in my handwriting the words, "Amended, 10th October, 1874, E. B. Wood, C J." The only other amendment made in the writ is consequent upon what I have said in respect of the change made in the sittings of Queen's Bench in Term, and as a Court of Oyer and Terminer, &c., by the Act 38 Vic., chap. 12, secs. 3 and 5. Mr. Carey's draft made the writ returnable on the first day of the Hiliary Term next, to wit, on the 25th day of February, in the year of our Lord one thousand eight hundred and seventy-five." (38 Vic. chap. 12, secs. 3 and 5.)

But the Court of Queen's Bench would not on that day sit as a Court of Oyer and Terminer, &c., and I therefore struck out the words "First day of Hilary Term next, to wit, on the twenty-fifth," and substituted the word "tenth," the day of the sitting of the Court as a Court of Oyer and Terminer, &c.

And further on and last of all, I struck out the words "*in banco*" following the word sitting, and inserted the words after the word "sitting" the words "as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*;" and opposite these amendments, on the margin of the writ, I placed the words "Amended 10th October, 1874, E. B. Wood, C. J."

The cognate writ of *capias cum proclamatione* contains the same amendments made at the same time and for the same reasons. I forbear to recapitulate these amendments; but I send herewith exact copies of both writs respectively, marked D and E, the amendment being written in red ink, and the words scored out having a red line through them; so that the whole thing may be comprehended at a glance.

It appears by the papers on file in the Crown Office that on the 10th of February, 1875, the writs were returned by the Sheriff and a record of judgment in due form made up and filed in the office of the Clerk of the Crown and Peace; but as this record is only a recital of the several writs and their return and as the labor of mak-

ing a copy of it is considerable, I am inclined to forego the labor unless a copy should be thought material. For myself, I do not see that it is.

In the case of criminal outlawry, the proceedings are necessarily *ex parte;* they are simply to compel, after indictment found, the surrender of the delinquent. In these proceedings the offender cannot appear by counsel; he must first surrender himself to the custody of the law, and then his counsel may appear and be heard, but not before. The end aimed at is the surrender of the offender; that being accomplished, the proceedings are at end. I make this remark as showing the reckless allegation or ignorance of the petitioners in respect of what they say as to counsel for the defendant. Of course the defendant could have no counsel known to the Court; and if he had, I do not think it would be incumbent on the Court to consult that counsel as to what should be the terms and form of writ against his client. They say amendments "were made in a most illegal and unjust manner," that "dates were altered and changed in certain documents and records of the Court then in the custody of the Clerk, and thereby was procured the illegal outlawry of Louis Riel and others." There never was any other case of outlawry in the Court in Manitoba that I know of than that of Louis Riel, and no change of any "dates in documents and records" were ever made in that case except as I have mentioned; and those changes being perfectly right according to the law and the justice of the case, and in no sense, as I can see, affecting the end reached in the outlawry proceedings, to say that thereby the illegal outlawry of Louis Riel was procured, is one of the most wanton, reckless and daring charges ever made against a judicial officer.

It is charged against me that in what I did I did not consult Mr. Carey, (then the Clerk of the Court, but since dismissed for alleged interomissions in his office.) I was not aware before, that I was bound to consult the Clerk of the Court as to the exercise of any judicial discretion in the discharge of my judicial functions. My ignorance in this respect, has no doubt been the occasion if not the cause of this dastardly attack on my honor as a Judge for which I have no remedy.

Even if the writs in question had been formally issued and delivered to the Sheriff for execution, but not formally executed, on my attention being called to any matter of mere form, I should not have had any hesitation in making the amendments thought expedient or even necessary; and now I should, in such a case, have as little hesitation even without the consent or knowledge of the Clerk of the Crown and Peace. As an illustration of the length to which the power to amend now goes in criminal matters, I need only refer to 32, 33 Vic., chap. 29, sections 70, 71 and 72. A criminal information may be amended (in *re* Conklin, Q. B. Ont. 160.)

But really in fact in this matter there was no amendment of even the writs properly so called—there was merely more specific directions in the writs given to the Sheriff—the form of the writs not being prescribed by Statute, but being settled by counsel so as to conform to the Statute and exigency of the occasion in this case caused by a change in the sittings of the Court *in banc*, and as a Court of Oyer and Terminer, &c., by 38 Vic., chap. 12, secs. 3 and 5.

In all cases of criminal outlawry, the offender can, on surrendering himself, move against the judgment and assign error on the record, which is made up of the writs and returns; and if not conformable to law, the judgment of outlawry will be set aside.

Whether the judgment in this case would be upheld by the Court, I can offer no opinion, but I am certain it would not on the law or merits be held defective for any change or alteration in the writs. (Rex *vs.* Barrington, 3 T.R. 499; Rex *vs.* Almon, 5 T.R. 202; Rex *vs.* Perry, 6 T.R. 573.)

In conclusion permit me to say that I cannot but feel, that through malice and malevolence, great injustice has been done me in this matter. The mere mention of any such accusation as this against a Judge, in a formal petition, although without any justification in fact, is so abhorrent to all our notions of the uprightness of the Bench, that careful examination is with many dispensed with, and flagrant wrong visited upon an innocent and perfectly justifiable act. There can be no question in this case; but I confess that the mere imputation or insinuation annoys and distresses

me, even coming from the source it does. An examination of the accompanying papers, and a consideration of the facts, will demonstrate how unfounded and malicious is the whole accusation.

I repeat the amendments in the two writs became necessary by Mr. Carey who drafted them, not observing carefully the change made in the sittings of the Court of Queen's Bench as a Court of Oyer and Terminer, &c., in the Manitoba Act, 38 Vic., chap. 12, secs. 3 and 5—a perfectly proper proceeding—and the return of the Sheriff endorsed on the back of the writ of *exigent* shows that he executed it according as it is amended. The effect of 38 Vic., chap. 12, was to make the writs returnable to the Court at its sitting as Court of Oyer and Terminer, &c., instead of to the Court sitting *in banco;* and the effect of the amendment was to make the writs returnable to the former Court thirteen days before the latter Court. That was all; a thing perfectly proper and necessary, and in no way affecting Riel prejudicially and absolutely necessary to the *pro forma* proper proceedings of the case.

A.

CANADA, PROVINCE OF MANITOBA, WINNIPEG.

COURT OF QUEEN'S BENCH (CROWN SIDE).

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c.—

To Edward Armstrong, Sheriff of the Province of Manitoba, &c., GREETING:

We command you that you omit, not by reason of any liberty in your bailiwick, but that you enter the same, and take Louis Riel, of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, if he should be found in your bailiwick, and him cause to be safely kept, so that you have his body before our Justices of our Court of Queen's Bench, sitting in term at the city of Winnipeg, in the county of Selkirk, in the Province aforesaid, for the trial of causes criminal and civil, and holding Assizes of Oyer and Terminer and General Gaol Delivery for the Province of Manitoba, on the tenth day of February next ensuing, to answer unto us concerning divers trespasses, contempts and felonies of which he is indicted, and have you then and there this writ.

Witness the Honorable James Charles McKeagney, Senior Puisné Judge of Our said Court of Queen's Bench, at Winnipeg aforesaid, this nineteenth day of November in the year of Our Lord one thousand eight hundred and seventy-three, in the thirty-seventh year of Our Reign. One marginal reference is good.

DANIEL CAREY, Clerk of the Crown and Peace.

The within named defendant is not found in my bailiwick.

The answer of E. ARMSTRONG, Sheriff.

Sheriff's Office, 10th February, 1874.

B.

CANADA, PROVINCE OF MANITOBA, WINNIPEG.

COURT OF QUEEN'S BENCH, (CROWN SIDE).

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c.

To Edward Armstrong, Sheriff of the Province of Manitoba—GREETING:

We command you, as we have before commanded you, that you omit not by reason of any liberty in your bailiwick, but that you enter the same and take Louis

Riel, of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, if he should be found in your bailiwick, and him cause to be safely kept, so that you have his body before our Justices of our Court of Queen's Bench, sitting in term, at the city of Winnipeg, in the county of Selkirk, in the Province aforesaid, for the trial of causes civil, as well as criminal and holding assizes of Oyer and Terminer and General Gaol Delivery for the Province of Manitoba, on the 10th day of June next ensuing, to answer unto us concerning divers trespasses, contempts and felonies, of which he is indicted and have you then and there this writ.

Witness, the Honorable James Charles McKeagney, senior Puisné Judge of our said Court of Queen's Bench, at Winnipeg, aforesaid, this tenth day of February, in the year of Our Lord, one thousand eight hundred and seventy-four, in the thirty-seventh year of Our Reign.

DANIEL CAREY, Clerk of the Crown and Peace.

The within named defendant, Louis Riel, is not found within my bailiwick.

The answer of EDWARD ARMSTRONG, Sheriff.

June 10th, 1874.

C.

CANADA, PROVINCE OF MANITOBA, WINNIPEG.

COURT OF QUEEN'S BENCH, (CROWN SIDE).

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c.

To Edward Armstrong, Sheriff of the Province of Manitoba—GREETING:

We command you, as we have before often times commanded you, that you omit not by reason of any liberty in your bailiwick, but that you enter the same and take Louis Riel, of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, if he shall be found in your bailiwick, and him cause to be safely kept, so that you may have his body before our Justices of our Court of Queen's Bench, sitting in term, at the city of Winnipeg, in the county of Selkirk, in the Province of Manitoba, for the trial of causes, civil as well as criminal, and holding Assizes of Oyer and Terminer and General Gaol Delivery for the Province aforesaid, on the tenth day of October next ensuing, to answer unto us concerning divers trespasses, contempts and felonies, of which he is indicted, and have you then and there this writ.

Witness the Honorable Edmund Burke Wood, Chief Justice of our said Court of Queen's Bench, at Winnipeg, aforesaid, this tenth day of June, in the year of Our Lord one thousand eight and seventy-four, in the thirty-seventh year of Our Reign.

DANIEL CAREY, Clerk of the Crown and Peace.

The within named defendant is not found in my bailiwick.

The answer of E. ARMSTRONG, Sheriff.

Sheriff's Office, October 10th, 1874.

D.

CANADA, PROVINCE OF MANITOBA, WINNIPEG.

COURT OF QUEEN'S BENCH, (CROWN SIDE).

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c.

To the Sheriff of the Province of Manitoba—GREETING:

We command you that you cause to be exacted Louis Riel, late of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, Gentleman, from County Court to County Court for four successive County Courts and then at the succeeding Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*, the last being the *quinto exactus*, until he shall be outlawed, according to the law and custom of England, if he shall not appear; and if he shall appear, then that you take him, and him safely keep so that you may have his body before us at the city of Winnipeg, in the Province of Manitoba aforesaid, on the tenth day of February, in the year of our Lord one thousand eight hundred and seventy-five, at our Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*, to answer to us for a certain felony and murder whereof he is indicted, and whereupon you have divers times before returned unto us that the said Louis Riel is not found in your bailiwick and that you then have there this writ.

Witness the Honorable Edmund Burke Wood, Chief Justice of our said Court of Queen's Bench at Winnipeg, this tenth day of October, A. D. 1874, in the thirty-eighth year of Our Reign.

By the Court,

DANIEL CARCY, Prothonotary and Clerk of the Crown and Peace.

RETURN.—By virtue of this writ to me directed, at the County Court holden at the city of Winnipeg, in and for the county of Selkirk, in the Province of Manitoba, on the third day of January, in the year of our Lord one thousand eight hundred and seventy-five, I did in open County Court demand the within named Louis Riel a first time and he did not appear, and at the County Court holden at the county site in and for the county of Lisgar, in the Province aforesaid, on the seventh day of January, in the year aforesaid, I did in open County Court demand the within named Louis Riel a second time; and at the County Court holden in and for the county of Provencher, at the county site in the said county, I did in open County Court demand the within named Louis Riel a third time, and he did not appear; and at the County Court holden in and for the County of Marquette East at the county site of the said county on the thirteenth day of January, in the year aforesaid, I did in open County Court demand the within named Louis Riel, and he did not appear; and at the Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery, and of Assize and *Nisi Prius*, at the city of Winnipeg, in and for the county of Selkirk, in the Province of Manitoba, in and for the said Province, on the tenth day of February in the year aforesaid, I did in open Court demande th said within named Louis Riel, and he did not appear, as within I am commanded.

Therefore by the judgment of Curtis James Bird, Esquire, Coroner of Our Lady the Queen for the Province of Manitoba, the said within named Louis Riel is, according to the law and custom of England, outlawed.

The answer of EDWARD ARMSTRONG, Sheriff, Manitoba.

E.

CANADA, PROVINCE OF MANITOBA, WINNIPEG.

COURT OF QUEEN'S BENCH, (CROWN SIDE).

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith &c., &c.

To the Sheriff of the Province of Manitoba—GREETING:

Whereas, by our writ of *exigent*, having the same day of teste and return as this our writ of Proclamation, we have commanded you that you cause to be exacted, Louis Riel, late of the parish of St. Vital, in the county of Provencher, in the Province of Manitoba, gentleman, from County Court to County Court, for four successive County Courts, another at the succeeding Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery and Assize and *Nisi Prius*—the last being the *quinto exactus*—until he shall be outlawed, according to the law and custom of England, if he shall not appear; and if he shall appear, that then you take him and him safely keep, so that you may have his body before us at the city of Winnipeg, in the Province aforesaid, on the tenth day of February, in the year of Our Lord one thousand eight hundred and seventy-five, at our Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery, and of Assize and *Nisi Prius*, to answer to us for a certain felony and murder whereof he is indicted: We, therefore, command you, that by virtue of the Statutes in that case, made and provided, you cause three proclamations to be made, according to the form of the said Statutes in that case, made, and provided in form following (that is to say) one of the same proclamations in the open County Court to be begun and holden in the County of Selkirk on the third day of January next, in the year last aforesaid; and one other of the same proclamations to be made at the succeeding sitting of the County Court to be holden in and for the county of Lisgar, in the aforesaid Province, on the seventh day of the same January; and one other of the same proclamations to be made one month at least before the *quinto exactus*, by virtue of the said writ of *exigent*, at or near to the most usual door of the Roman Catholic Church, in the parish of St. Norbert, in the county of Provencher, aforesaid, upon a Sunday, immediately after Divine Service and sermon, if any sermon there be, and if no sermon there be, then forthwith after Divine Service, that he, the said Louis Riel, render himself into the custody of you, our aforesaid Sheriff of Manitoba, before or at the time when he shall be the fifth time exacted, so that you may have his body before us at the said sitting of our said Court of Queen's Bench, on the aforesaid tenth day of February next, at the city of Winnipeg aforesaid, to answer to us for the felony and murder aforesaid, and have you then there this writ.

Witness, the Honorable Edmund Burke Wood, Chief Justice of our said Court of Queen's Bench, at Winnipeg aforesaid, this tenth day of October, A.D., 1874, in the thirty-eighth year of Our Reign.

By the Court,

DANIEL CAREY, Prothonotary and Clerk of the Crown and Peace.

CANADA, PROVINCE OF MANITOBA.

SHERIFF'S RETURN.—I humbly certify and return that the within Louis Riel is not within my bailwick; and, I further certify and return that at the County Court, holden in and for the County of Selkirk, in the said Province, on the fourth day of January, in the year of Our Lord, one thousand eight hundred and seventy-five, at the Court House, in the said county, in open County Court, I made the first public proclamation; and at the succeeding County Court holden in and for the county of

Lisgar, in the Province aforesaid, on the seventh day of January, in the year aforesaid, at the county site of the said county, in open County Court, I made the second public proclamation; and on the third day of January, in the year aforesaid, at and near most usual door of the Roman Catholic Church, in the county of Provencher aforesaid, upon a Sunday, immediately after Divine Service and sermon, I did make another public proclamation, that the said Louis Riel should render himself to answer Our Lady the Queen, as by this writ he is required, and as I am within commanded.

The answer of EDWARD ARMSTRONG, Sheriff of Manitoba.

CHAPTER II.

Observations on the Second Paragraph of Mr. Clarke's Petition.

"That said Hon. E. B. Wood, Chief Justice of the Court of Queen's Bench, of the Province of Manitoba, at the city of Winnipeg, in said Province, in the month of August A.D. 1874, did deliberately, corruptly, illegally and personally prepare, assist others in preparing, prepare and cause to be prepared, a list of names of French half-breeds to serve as petit jurors at the next approaching term of said Court of Queen's Bench, to be held in October, 1874, at which Court one Ambroise Lepine and others were to be tried on an indictment for murder, and that said Hon. E. B. Wood, illegally and corruptly selected and placed and caused to be selected and placed on such list the names of such French half-breeds only as were well known to be the declared enemies of the said Lepine and others, who were to be tried for murder as aforesaid; and that said Hon. E. B. Wood did himself hand such list, so illegally selected and prepared as aforesaid, to the Sheriff of the Province of Manitoba, and ordered him to summon as many as he could find of persons whose names were on said list, and such order was obeyed, and that said Lepine was tried by a jury composed of his enemies, empannelled from said list so illegally prepared, and was found guilty of murder, and upon such finding was sentenced to death by the said Hon. E. B. Wood, Chief Justice."

I arrived in Manitoba about the middle of June, 1874, and at once assumed my judicial duties. I was a stranger to Manitoba and to all of its people; I found matters judicial in all branches, in a very unsatisfactory condition. I set about making myself master of the situation. The Court of Queen's Bench was then sitting as a Court of Assize and *Nisi Prius*, when I arrived, and continued to sit till the 1st of July. There were some eighty civil cases on the docket, some of them having been made *remanets* two or three times, all of which I tried, or they were disposed of during that term. The statutory sitting of the Court was three times in a year, on the 10th of February, June and October; and the duration of sitting of the Court, at each term, was from and including the 10th to the end of the month. A petty jury of forty-eight attended ten days and were then discharged, and a new panel of forty-eight then came on and served to the end of the sitting of the Court—ten days—making in all ninety-six petty jurors to each term of the Court, besides the Grand Jury, a pretty large drain on the population of that period. At my suggestion, this, however, was all changed by the Legislature in the month of July of that year, by the passing of the short Act 38 Vic., chap. 12.

I recollect one day in August, I think it was, at the Court House, Edward Armstrong, then the High Sheriff of Manitoba as he was called, and with whom I had became well acquainted, asked me into his office, and after I had entered he informed me that he was about summoning the jury for the next sittings of the Court to be holden on the 10th of October. I recollect it struck me as being early, and I so remarked to him. He said, no, it was not too early, that he had a great deal of trouble in making up his panel of competent men, so many were away from home that season of the year, or words to that effect. I said, how do you select your panel, from a jury list? He replied, he had had a jury list to begin with, but that it was exhausted long ago and abandoned; and since that time, for each sitting of the Court,

he had made up his panel as best he could, acting on his knowledge of men and exercising his best discretion. But, I said, have you no Statute on the subject? He replied, yes, but it had practically become a dead letter. I remarked, in my view, it was a very serious and awkward thing. He replied, that, so far, he had had no difficulty. I then obtained the Statute there, in his office, and looked up the matter to see if any duty devolved on me in the premises, as important criminal trials were coming on the next sittings of the Court. After looking at the Statutes, I pointed out to the Sheriff how the petty and Grand Jury lists were to be by him and the Justices of the Peace made and filed, from which he was to take jury panels. His reply, in substance was, that the list had long since been exhausted and abandoned, and had not been renewed, and that he must proceed in the way he had been going on. "Well," I said, "I have told you what my opinion is. It appears by the Statute that I have no commanding or directing power in the matter. The Prothonotary is directed by the Statute to issue the *venire facias;* and you are directed by the Statute to receive the writ and return attached to it a jury panel. This is to be done according to law. If there should be a challenge to the whole array for informality in the selection, it may be a serious affair." I left remarking to the Sheriff that, "I hope we should have a fair jury, and free from violent partizans; and that, of the French, there would be as many as possible who spoke, or could understand, both languages."

The above is, as near as I can at this period of time recollect, the substance of the conversation between the Sheriff and myself; and the only conversation we had on the subject. The subject was never afterwards referred to in any way by the Sheriff or myself, and I had entirely forgotten it; but it was brought to my mind by the charge in the petition and to this hour; I have no reason to believe or suspect, nor do I believe or suspect, that a proper jury was not summoned. I never saw the jury panel, except, it may be, as attached to the *venire facias* in the hands of the Clerk of the Court, nor did I, at the Court and until the Assizes were over, know a solitary person on the panel; nor do I now know the names or the persons of but two men on the panal, namely: Samuel West of Winnipeg, and Norbert Nolin, of St. Boniface, and it was years after the Assizes before I knew them by sight even. At the time the jury was summoned I had been but a few weeks in Manitoba, and if I had been bad enough to do that with which I am charged I could not have done it without outside assistants, with whom I could be easily confronted.

The whole statement and every part of it is a most wicked and diabolical fabrication, at which even the most fiendish men, as it seems to me, would stand aghast, but it seems not so to Clarke.

The question arises how, after the lapse of seven years, could Mr. Clarke get hold of something out of which he could weave his fiendish and diabolical web of calumny? It happens in this wise: Clarke himself, as I shall hereafter show, with the prone moral nature to evil of which he is naturally possessed, intensified by long indulgence in every vice, hates me with a keen hatred for being thwarted and exposed in several most iniquitous and dishonest transactions which have come before the Court, and in respect of which he has vowed vengeance against me. Mr. Carey imputes to me his dismissal by the Government from the office of Prothonotary and Clerk of the Crown and Peace for intromissions in his official duties; but with which I had nothing on earth to do. The late Sheriff Armstrong was, in the day of the power of Mr. Clarke, his creature and henchman, and he was offended at a report I made in respect of the reward of Ontario for the apprehension of the Scott murderers, to which reward the late Sheriff was a claimant, and he imputes to me complicity with his dismissal by the Government from the office of High Sheriff of Manitoba for intromission of official duties; and he furthermore thinks Clarke will be restored to power in Manitoba vain hope—when he too will regain his former position. These persons fancy that to the attainment of these objects, I, in my position of Chief Justice, am an insuperable impediment. Hence this trio have fabricated and concocted this vile calumny after the lapse of seven years. Singular that persons so morally sensitive to the fair administration of justice should have been content to withhold this charge for seven years and then disclose it in the way they have;

especially when parol evidence, by lapse of time, through the slipperiness of memory, and often the lubricity of moral rectitude, is necessarily exposed to so much incertitude.

CHAPTER III.

Observations on the Third Paragraph of Mr. Clarke's Petition.

"That Hon. E. B. Wood is so notoriously partial, dishonest and unjust in his judgments and decisions, that suitors in said Court know and feel that their rights are not safe, and the people of the Province have no confidence in, or respect for, the judgments or decisions of said Hon. E. B. Wood, and have lost all confidence in, and respect for, the administration of justice in the Province, so long as said Chief Justice Wood shall continue to preside in any of the Courts of Justice in said Province."

In this paragraph there are no specific charges to meet. It is easy to make charges in this form. Of course it is not expected that I should answer directly such a charge as this by simply traversing it. It rests on the allegation of the petitioners. I will, therefore, make some remarks on the character and the position of the petitioners and on their presumable reasonable opportunity to know that about which they speak; but I shall introduce the petitioners in the inverted order in which their names purport to be subscribed to the petition.

On enquiry I find that J. E. Cooper lives at Emerson, some sixty miles from Winnipeg, where he has resided for some time. I have no acquaintance with or knowledge of him. I do not know him by sight. I have made enquiry in the offices of the Courts and I cannot find that he ever had, or was connected with, any litigation in this Province, except that he is now held to bail for trial at the next October Assizes, on the commitment and order of Colonel Peebles, the Police Magistrate for the Province, on a charge of wilful and corrupt perjury, on the evidence, as I understand, of Mr. Whitcher, Agent at Winnipeg of the Crown Lands Office, and others.

I have had considerable difficulty in ascertaining the identity and whereabouts of William Boyle; I can find but one such name in this Province. On reference to the Land Office at Winnipeg, I learn that there is a person of that name who purports to be a homesteader on the South of Section 14, Township 3, Range 7 West, South Dufferin, who is entered as having come from the township of Huntly, county of Carleton, Ontario, and took up his homestead on the 3rd of May, 1877. If that is the person, his residence is about 150 miles from Winnipeg, and about 100 miles from Emerson. I can find no trace of his name in the offices of the Courts, or otherwise in connection with any litigation; I never saw the name that I know of, nor did I ever hear of such a man being in existence, till I learned it from Mr. Clarke's petition.

F. T. Bradley resides at Emerson and is an officer in the Customs Department. He is so far as I know (barring his action in this petition as after disclosed in the correspondence with him, and in reports as to what he had said about his signature to the petition,) what may be termed, a respectable man. He has never, in so far as I know, or on inquiry can ascertain, been concerned in, or had any connection with, any litigation, directly or indirectly in the Courts in this Province. I know him by sight, but I have no personal acquaintance with him—having never in my life ever spoken to or with him. I have had some formal official correspondence with him on magisterial matters, nothing more.

It is well known here that he and Mr. Clarke were, until recently, great enemies, and were, each, unsparing of denunciations of the other. In this, perhaps, they were both right—that one was right I have no doubt at all. So bitter and deadly was their personal hostility that they carried pistols, each declaring that on meeting the other he would shoot him, but each, as it is said, took great care not to meet the other. This was when they both lived in Winnipeg.

Upwards of a year ago now, Mr. Clarke went to Emerson to live and commenced speculating in lands, and among other lands, some near Emerson, to which the Hud-

son Bay Company "unjustly and greedily," as Mr. Clarke says, set up a title. It is reported that Mr. Bradley is concerned with Mr. Clarke in these land speculations,—that the lamb and the lion lie down together—but that is difficult to tell which is the lamb and which the lion. It is reported that last winter Mr. Bradley was in Ottawa to assist Mr. Clarke in the advancement of these land matters; and while there, on an evening when he was a little elevated, Mr. Clarke got him to sign some petition about the Chief Justice, which Mr. Clarke said required investigation; and thinking it was, as it was said to be, a mere matter of form, he did sign his name to a paper, but to no such petition as was presented to the House of Commons and the Governor in Council. Of course I have not seen Mr. Bradley myself. I could have no personal intercourse with him on the subject; but it is fit and proper that I should state that after he had written to me the two letters of the 17th and the 21st of June, 1881, not at my instance at all, nor with my knowledge, he submitted the correspondence to certain gentlemen and had a conference with them on the subject; and it appears that the outcome of that conference was his letter to me of the 21st of July, 1881. From a gentleman who was a party to that conference, I am at liberty to disclose what I have said in reference to Mr. Bradley signing the petition. More could be said, but I am not at liberty to say it.

I will now introduce the correspondence, to which I solicit a careful examination and consideration. All I can say is, if Mr. Bradley is an honorable, high-minded and truthful man, he has a strange way of showing it.

"WINNIPEG, 15th June, 1881.

"SIR,—I find your name purporting to be subscribed to a petition against me in my official capacity as the Chief Justice of Manitoba, presented to the Governor General in Council—a copy of which has been forwarded to me for my perusal and observations.

"Therefore, as I have not the advantage of your personal acquaintance, and as, in so far as I know, you have never been, directly or indirectly, connected with any litigation in the Courts of this Province over which I have presided, you will be good enough to inform me whether or not you subscribed such a petition, knowing its contents; and if so, whether you have any knowledge of the allegations and charges contained in the petition—and if you have, what and on what evidence based and founded, giving full particulars. Awaiting your reply,

"I am, Sir, your obedient servant,

"E. B. WOOD.

"F. T. BRADLEY, Esq., Emerson."

"EMERSON, MAN., 17th June, 1881.

"SIR,—I have the honor to acknowledge the receipt of your letter of the 15th instant, asking for full particulars as to certain allegations contained in a petition against you subscribed by myself and presented to the Governor General in Council, a copy of which has been forwarded to you for your perusal and observations.

"As you have omitted to enclose me a copy of the petition to which you refer, I regret that I am not in a position to give you the desired information.

"I am, Sir, your obedient servant,

"F. T. BRADLEY.

"Hon. E. B. WOOD, Winnipeg, Man."

"WINNIPEG, 18th June, 1881.

"SIR,—I have your favor of the 17th instant in reply to my letter to you of the 15th instant, in which you say you cannot answer my letter without a copy of the petition.

"I innocently assumed that you would know what the petition contained before you signed it, and would recollect the most grave charges against a high judical officer, to the truth of which you had subscribed your name. In this, it seems, I am mistaken. I hope you will pardon the oversight, I hasten to correct the error.

"I herewith enclose to you a copy of the petition in question forwarded to me by the Secretary of State for Canada.

"You will now be in a position to reply definitely and distinctly to my letter to you of the 15th instant. Be good enough to do so at your earliest convenience.

"Your obedient servant,

"E. B. WOOD.

"F. T. BRADLEY, Esq., Emerson, Manitoba."

"EMERSON, MAN., 21st June, 1881.

"SIR,—I am in receipt of your letter of the 17th instant enclosing a petition addressed to His Excellency the Marquis of Lorne, Governor General of Canada, in Council, in which you state that you innocently assumed I would know what the petition contained before signing it, and would recollect the most grave charges against a high judical officer, to the truth of which I had subscribed my name.

"Reverting to your prior letter now before me, I would say, in my opinion the questions therein submitted should be given and answered before that tribunal who have requested of you your perusal of the petition and observations thereon, and not demanded by the accused from an alleged petitioner.

"For your information, however, I would say that I have not to my knowledge signed any petition addressed to His Excellency the Governor General in Council reflecting in any way upon your character.

"I am, Sir, your obedient servant,

"F. T. BRADLEY.

"Hon. E. B. WOOD, Winnipeg, Man."

Just a month after the receipt of the above letter without any intercourse, directly or indirectly, by letter or otherwise, I received from Mr. Bradley the following letter:—

"EMERSON, July 21st, 1881.

"DEAR SIR,—While I have not felt called upon to answer certain questions submitted to me by you in regard to the allegations preferred in a petition to Parliament assembled, I may say that I have not signed the petition to which my name is attached, in its entirety, as many accusations contained are not known to me, and must have been inserted after signature.

"My only desire in signing the petition was in view of investigation of those charges circulated against you in the discharge of your duties.

"F. T. BRADLEY.

"Hon. E. B. WOOD, C. J."

I have nothing further to say of Mr. Bradley, I cannot speak of him as I think he deserves, without transcending temperate expression; and I, therefore, leave him to the judgment of His Excellency in Council.

One thing seems apparent, in this matter he was a mere instrument in the hands of Mr. Clarke. Another thing seems apparent, this petition which in a private and public point of view is of vast moment—to me, a matter of life and death—to suitors in Court, of rights and property, and may be of reputation, which is more dear than property, of liberty and even life, and a shock to the moral sense of the whole world is got up by Mr. Clarke, purporting to be deliberately signed by the apparent

signaotries, but was not so signed by one of them at least, may be, and probably was by none except Mr. Clarke, and it is in fact a forgery. I understand Mr. Bradley to mean this: He signed something, he knows not what (called a petition), on a half sheet of paper, consisting of more than one-half sheet; this half sheet of paper on which he placed his signature, if placed there at all has been detached, and attached to other and different half-sheets, containing other and different matter; or other half-sheets have been inserted, added to or substituted, containing other or different matter. If this be true, in a matter so important as that of which this petition treats, it is at least a moral offence of the very greatest magnitude--it is a forgery! It is a fraud! I leave this matter to be settled by His Excellency in Council with Mr. Clarke and Mr. Bradley. As regards the petition, it all comes to this, Mr. Clarke is in truth the sole petitioner, and the commencement of the petition: "The petition of the undersigned," etc., is a cheat and a fraud.

Henry J. Clarke I found in Winnipeg when I came here, in June, 1874. The Queen's Bench was then sitting as a Court of Oyer and Terminer, &c., and Mr. Clarke, the Attorney General was acting as Crown prosecutor. At this Court an incident occurred in connection with Mr. Clarke which created an unpleasant impression on my mind. I found on file for trial, among other indictments, five indictments which the Crown had postponed from Court to Court, namely, the Queen against George N. Merriman, kidnapping Gordon Gordon; the Queen *vs.* Gordon Gordon, forgery; the Queen *vs.* Gordon Gordon, perjury; the Queen *vs.* Lorin Fletcher, kidnapping; the Queen *vs.* William J. Macaulay, accessory after fact to kidnapping. I examined the charges in these indictments, and looked to see what witnesses were indorsed on the back of the indictments, and inquired where those witnesses were. I was informed that they were in Court, or could be produced in a few minutes. I then asked Mr. Carey, who was then acting for the Attorney General and under his instructions, if the Crown was ready to proceed with the cases, and if not, why not? He replied that the Attorney General was not ready to proceed; and moreover, that the day previous when Mr. Justice Betournay was on the Bench, the cases had by his order been put off to next Court, and the bail respited. Counsel for the defendants respectively denied that they had had notice of the motion; nor were they, as they claimed, present when anything of the kind took place; and they protested against the further postponement of the cases. No note of the alleged order was produced, Mr. Carey saying it was arranged between Mr. Justice Betournay and the Attorney General, who, as he alleged, was not very well that morning, and was not present in Court. I think this was the last day of the sittings of the Court. I selected one indictment in which it was admitted that the witnesses for the Crown were in Court. The Queen *vs.* Macaulay, the defendant being a large lumber manufacturer in Winnipeg, and I ordered a jury to be called. Mr. Carey, the Clerk, hesitated. I peremptorily ordered a jury to be called, and sent a constable as a messenger for the Attorney General. The jury was empanneled. The messenger for the Attorney General returned, but without the Attorney General, and conferred with Mr. Carey. Mr. Macaulay was ordered into the criminal dock, for it was a felony with which he was charged; and the jury, I believe, were sworn when Mr. Carey arose and said he was instructed by the Attorney General, on behalf of the Crown, to enter a *nolle prosequi*, and the four other indictments were disposed of in the same manner. It struck me at the time that these indictments were procured and kept hanging over the heads of the persons indicted for an improper purpose, derogatory to the honor of the Crown, and I so expressed my impression at the time in open Court, and subsequent information and facts have converted that impression into a conviction.

Mr Clarke shortly after left Manitoba and took up his residence, as it was reported, in California. He returned to Manitoba in the autumn of 1877, and opened a law office, and commenced the practice of the law, but his chief business was in and about the police courts, presided over by the puisne judges. Mr. Clarke's practice before me was chiefly in criminal trials on indictments, in which he was counsel for the accused. We did not get on pleasantly. The cause was his ignorance of

law, and particularly of the law of evidence or mine. A notable instance of it, that I now recollect, occurred in the case of the Queen v. Henriette Anderson, at the sittings of the Assizes in October, 1877.

At the opening of the Assizes, when the Grand Jury were called to be sworn, Mr. Clarke arose and asked the attention of the Court. He said that he was retained as counsel for Henriette Anderson, against whom a bill of indictment for infanticide was to be preferred at this Court, which would come before the Grand Jury for their consideration; and that he was advised and believed the panel of the Grand Jurors was defective and illegal, and, therefore, he challenged the array of Grand Jurors; and he desired that I would note his motion, and take down the particulars of his motion. I declined to do so; but I informed him what the practice in such cases was—that he must file his grounds of challenge in writing, in the form of a declaration, and then counsel for the Crown could either demur or traverse it. If there was a joinder in demurrer, I would hear argument and dispose of it at once; if issue in fact were joined, evidence would be heard by the Court, and the issue disposed of according to evidence. I gave him a-half hour to prepare his declaration, and he prepared what he said he thought contained a statement of sufficient facts to validate the array, which he read to the Court and it was ordered to be filed. The counsel for the Crown demurred, and Mr. Clarke joined in demurrer. The demurrer was argued; I gave judgment for the demurrer, very much to the dissatisfaction of Mr. Clarke, who apparently did not attempt to conceal his disappointment. My judgment was in writing and is now on file in Court; and a copy of it is subjoined to these observations on the third paragraph of Mr. Clarke's petition, marked F. As I recollect, the chief objections to the array were, that the Christian names of the jurors were not spelled in full, or spelled by contraction, as "J. W. Primrose, Wm. Dick, Alex. Smith," &c.; and the names of the places of residence were indicated by contractions, all of which, however, are pointed out in the judgment.

I will mention another incident which, I think, occurred at the same Assizes, in the Queen *vs.* Dapas, in which Mr. Clarke was counsel for the prisoner. A witness for the Crown was examined and gave his evidence in chief. Mr. Clarke, on cross-examination, asked the witness: "Was he present at the preliminary examination before the magistrate?" He answered: "Yes." He asked him had he anything to say? "Well," says Mr. Clarke, "what did the prisoner say?" Here I interposed, and said to Mr. Clarke: "Surely you do not mean to contend that what the prisoner then said is evidence to be given here, to-day, in his own behalf?" He answered: "Yes, I do, and why not?" I replied: "You can't be really serious, Mr. Clarke, and we have no time for trifling; I rule that such evidence cannot be received." He answered: "Well, I can accomplish the same thing in another way" He then took the depositions taken before the magistrate, and asked the witness if the name subscribed to the depositions was in the handwriting of the justice. He was answered in the affirmative. He then asked, "Was the name subscribed to the statement of the prisoner in the handwriting of the prisoner?" The witness said it was read over to the prisoner in his presence, and he saw the prisoner sign it. Mr. Clarke then giving a glance at the Bench, turned with an air of triumph to the jury and commenced reading the statement made before the magistrate to the jury. I stopped him and said I did not propose to have any more trifling, that I could not think him serious in what he proposed to do; and that it was my duty to see that every trial was conducted according to law; that he would see even by looking at the Statute that, recognizing the law, it prescribed a warning to the prisoner that he need make no statement unless he liked, and that his statement, if made, might be given in evidence against him, but it nowhere says for him; and for the best of all reasons, it would make a prisoner a witness in his own behalf—no less absurd, nay, more absurd, than now to put the prisoner in the witness box to give evidence in his own behalf, for in such case he might be cross-examined, in the other there was no responsibility of even cross-examination. Mr. Clarke replied that he was astonished at the ruling of the Court, that he could produce plenty of authorities to show that what he proposed to do was the correct rule of law, and that he

had been twenty-five years practising at the bar and had never before heard it questioned; and that the authorities and his learning were to little purpose if he was to be ruled out of a proper defence for the prisoner in this fashion. I answered that it was arrant nonsense to talk about authorities sanctioning such a course of procedure—there were no such authorities, none could be produced—and as to his experience of a quarter of a century at the bar, it seemed he would have to spend another quarter of a century, and be a better student than he had been in the past twenty-five years before he would "be able to come to the knowledge of the truth" in the elementary principles of the law of evidence. Mr. Clarke professed to be highly indignant, and requested, in not very civil terms, that I would note his tender of this evidence and my rejection of it. I said I would do so if he demanded it, but for the sake of his reputation as a lawyer he had better not insist on my disfiguring my notes with such an absurdity.

In the month of February, 1878, following, there was a trial before me under the "Speedy Trials Act," (without a jury of course) of the Queen *vs.* Woolner. As one of the witnesses for the Crown was proceeding with his narrative, and to connect the same, mentioned that the prisoner told him that the next day, on Monday morning, he was going to one Mr. Hay to do some work, and the felony in the meantime having been discovered, he went to Mr. Hay's and asked if the prisoner had been or was there, and he proceeded to say that Mr. Hay said he was not there and had not been there. To this Mr. Clarke objected on the ground that it was hearsay evidence. It was not material to the issue at all, and I had not taken it down; but it was merely in the way of connecting in the mind of the witness his narrative. I explained this to Mr. Clarke, and reminded him that there was no jury to be misled, and that I had not taken down what the witness said Mr. Hay had told him. Mr. Clarke replied that he protested against hearsay evidence being allowed and received by the Court, and wanted his objection noted. The thing seemed to me supremely ridiculous, but I noted the objection, and remarked that hearsay evidence was objectionable as had been ruled in the notable case of Bardwell *vs.* Pickwick. "Yes," said Mr. Clarke, "it was that case I had in my mind." The trial then proceeded, and resulted in a verdict of guilty. Unfortunately for me, as it seems, some law students were in the Court room when the incident occurred, and reported it, and it came to the ears of Mr. Clarke; and some amusement was had at Mr. Clarke's expense over the authority of Bardell *vs.* Pickwick, and Sam Weller's, "Oh, quite enough to get, Sir, as the soldier said ven they ordered him three hundred and fifty lashes;" and the sharp reproof of Judge Scarlet: "You must not tell us what the soldier or any man said, Sir, it's not evidence." I understood Mr. Clarke felt himself highly insulted when he really comprehended the allusion to Bardell *vs.* Pickwick, and expressed himself very bitterly against me for the playful allusion.

Another incident came to my notice judicially in the month of January, 1878. There were in Winnipeg some six or seven Chinese, who all lived together and carried on the laundry business. One evening it seems they had a quarrel, and one of them went to a magistrate and laid an information against the others for robbery, and the others did likewise. They all were, by the Chief of Police for the Province, Mr. Richard Power, arrested and put into gaol. They were brought before the late Mr. Justice McKeagney, acting as Police Magistrate. He could make nothing of the charge, as none of them could speak or understand English, and no interpreter could be obtained; and it appeared to be a sort of family quarrel among themselves. It appeared when Richard Power arrested them, he searched them and found on them several trinkets of valuable jewelry and five twenty dollar gold pieces. The next morning early Mr. Power was obliged to leave for Portage La Prairie on important business; but before leaving he handed to an assistant officer, Mr. Huston, the money, &c., he had taken from the Chinese (explaining the matter), to be produced and deposited with the Clerk in Court, when the Chinese should be brought up for hearing. In some way Clarke found out that Huston had this money; and under pretence of a fee for defending them, although he could not understand or speak the Chinese lan-

guage, nor could they speak or understand English, he got from them an order on Huston for these five $20 gold pieces, he presented the order to Huson and persuaded him to hand them over to him. Mr. Justice McKeagney subsequently brought this transaction to my notice as Chief Justice. I told him it was his duty to order the money to be paid back into the custody of the law to be subject to the disposition of the Court under the Statute in that behalf. He said he had so ordered already, but Clarke had put him at defiance, and that he was afraid of his life should he go any further. I told him I should be deterred by no such consideration, and if the matter could be judicially brought before me in any way, I would make short work of it. Mr. Clarke heard the opinion I had expressed about the matter, at which I was informed he was very indignant, and used threatening and abusive language.

The criminal proceedings in the Chinese matter ended in nothing, but the "poor heathen Chinee" never got back his five $20 gold pieces from Mr. Clarke.

In the month of May, 1879, one Rimer was arrested by David B. Murray, the Chief of the City Police, on information from Toronto, Ontario, that he had, in Toronto, in the month of November preceding, committed forgery and fled the country, with considerable money, the fruits of his crime, and he found on him some $900 or $1,000 which he took from him, and at once by telegraph he communicated with the Police of Toronto, and received a reply "to hold prisoner until a special officer with a warrant could reach Winnipeg." I was made aware of the arrest of Rimer and considerable money being found on his person from the city papers. In order to justify Rimer's detention in gaol until the officer could arrive from Toronto, it became necessary to bring Rimer up to be formally remanded for eight days, and as I happened to be at the Court House on the Bench, I was asked to permit him to be brought before me for that purpose, to which I assented, and he was accordingly brought before me. I explained to the prisoner for what purpose he was brought up before me, and what it was my duty under the circumstances to do. A large concourse of professional gentlemen and other persons had gathered in the Court-room, and among them I noticed Mr. Clarke. When I had explained to the prisoner for what purpose he had been brought up, and my resolution to remand him for eight days, and was directing Mr. Marston, the Clerk of the Police Court to make out the warrant for remand, Mr. Clarke rose and said that he was retained as counsel for the prisoner, and that he had to state that there was no evidence before the Court to justify a remand. I replied that I thought differently, and must act on my own convictions of duty. On Mr. Clarke's intervening, it recalled to my mind the "Heathen Chinee" money matter, and I enquired of Mr. Marston, if any money had been taken on the prisoner, and if so, was it deposited with him? He replied that he understood quite a large sum had been taken from the prisoner, but that the Chief of Police, Mr. Murray, had not handed it over to him. I told him he was the proper depository, in the meantime, of the money; and Mr. Murray must be sent for to bring the money and everything into Court, and deposit it with the clerk; and that I should go no further till that was done. A messenger was accordingly sent for Murray to bring the money, &c. After a few minutes Murray came in with the money, &c. He said he had in money, as I recollect, from the prisoner, upwards of $900, consisting of sovereigns, Bank of England notes, some other bank notes, and some silver; but he said Mr. Clarke had presented him that day with an order from the prisoner for $200, which he had received but not as yet paid, as at the time the order was presented he had not the money at his office, but had put it away in his house, and was to bring down to Mr. Clarke the $200 when he came from his dinner. He said if this $200, for which he showed the order, was taken out, there would be some seven hundred odd dollars. My "righteous indignation" may be imagined. I said: "Not a dollar of the money is to be touched by any one;" and I expressed "my surprise at the daring and dishonorable conduct of Mr. Clarke as a professional gentleman in his attempt at inveigling money from an officer of the law in this fashion." Mr. Clarke attempted a defence of his conduct on the ground, as he said, that the money was the prisoner's, and the prisoner gave him, as a retaining fee, an order on his own money, as he had

a right to. I answered, I must confess with warmth: "For aught I know the money may be the prisoner's, but I strongly suspect it is not. That has nothing to do with the matter. The law has laid its hand on the money, not for the purpose of transferring it as a counsel fee to the prisoner's counsel, but for the purpose of securing its delivery to the rightful owner. It is another attempt to do what, to the disgrace of the administration of justice, was successfully accomplished in the case of the 'poor Chinese.'" I added: "I can only say if it had proved successful in this instance, I should have felt it my duty to visit so flagrant a breach of right and law with marked and signal punishment. Happily, by accident, it has turned out that I am relieved from that unpleasant duty." Astonishment and disgust were depicted on every countenance except that of Mr. Clarke. He looked pale and trembled—evidently with anger, for to shame he is a stranger.

This Rimer was successfully transported to Toronto, was tried, convicted, and is now in the Kingston Penitentiary.

Many more instances of unprofessional and disreputable conduct might be given, but I must, for fear of tiring, forbear.

I now come to civil cases. I will give one or two as illustrations of the general character of all cases brought before me, in which Mr. Clarke was concerned, either as counsel or as a party. Those in which he was concerned as party will probably be most significant. *Ab uno disce omnia.*

The case of Power *vs.* Clarke is a fair specimen of the cases he brought before the Court as attorney, or which were brought before the Court of which he was a party, plaintiff or defendant. This is a recent case, and I, therefore, select it out of many like it, because it is recent, and because he complained bitterly of my judgment, and moved Mr. Justice Dubuc for a new trial, which he refused; and because it constitutes, as rumor says, one of his chief grounds of grievance against me. The action is in the County Court of Selkirk, and came on for trial before me for the sittings of the Court at Winnipeg, on the 10th of February, 1880. I gave a written judgment on deciding the case. I think the decision is correct. I have no doubt about it. I crave a careful examination of that judgment which contains all the evidence in the case, and the grounds of decision. This decision gave great offence to Mr. Clarke. Let it be carefully examined, and an opinion formed from this judgment of Mr. Clarke's ideas as to the correct, fair and honest administration of justice. A copy of the judgment is subjoined to these observations on the third paragraph of the Petition marked G.

The next and only other case I shall mention is Dahll *vs.* Clarke. This is an extraordinary case, and suggests the utter depravity of Mr. Clarke. It was commenced in 1880, and not determined till late in the autumn of that year. It was protracted, waiting, at the instance of Mr. Clarke, for evidence on his part, but none was ever given or offered. It finally came on for judgment in November. I pronounced the judgment of the Court. A few days after, I understood Mr. Clarke, in the course of a public speech at St. Andrew's dinner, with outstretched arm, declared that he, in three weeks, would be in Ottawa, and would see whether or not Manitoba was to be longer inflicted with downright corruption in the administration of justice by one man, at the same time stating he had the greatest confidence in Mr. Justice Miller, who had then just come to the Province, and in Mr. Justice Dubuc, both of whom were present. He was, no doubt, smarting under the judgment of Dahll *vs.* Clarke, which a few day previous had been pronounced. A copy of this judgment is subjoined to these observations on the third paragraph of the Petition marked H.

I solicit a careful examination of this judgment. It contains the substance of the bill of complaint, the answer, and the entire evidence.

It is to be noticed that all the persons who purport to have signed this petition, except Mr. Clarke, are resident out of Winnipeg, sixty or one hundred and fifty miles or so, and in so far as is known, never have had any litigation in our Courts, and that no member of the Bar, or person having, or concerned in any litigation in Winnipeg, or out of Winnipeg, except Mr. Clarke, has subscribed this petition; it is fair, therefore, to assume, and, no doubt, it is the fact, that this petition was entirely

got up by Mr. Clarke, who, failing to get a solitary individual in or around Winnipeg, where all the litigation of this Province has been carried on, except the sittings of the county court outside, who have been concerned professionally or as a party in any legal proceedings, to sign his petition, wheedled and induced, or himself put to it, the signature of persons who either knew nothing of its contents, or nothing of the purpose aimed at by Mr. Clarke, or were careless or indifferent as to the consequences. It becomes, therefore, a matter of the first moment to know who this Mr. Clarke is, when he launches forth such charges, in a general way, as these are contained in the third paragraph of his petition, against a high judicial officer of the Crown; resting as they do, upon his own individual and personal character, I have already stated facts which lay a foundation for his personal hostility to myself. Many more if it were thought necessary might be added.

With the view of informing His Excellency in Council what kind of character this Mr. Clarke bears, I clip from the Manitoba *Free Press* of the 16th of November, 1878, the following outline of his biography in Manitoba. It was published and spread broadcast over Manitoba and all Canada; and in not a single material statement or paragraph, in so far as I know, has it ever received a contradiction. The only defect in the biography is, it seems to me, that the dark shadows of his moral character have been too faintly drawn, his iniquity and moral depravity have not been sufficiently developed, they have been touched with too light a pencil, with a faltering hand:—

MANITOBA FREE PRESS, DAILY EDITION, SATURDAY, NOV. 16, 1878.

H. J. Clarke.

The subject of the following sketch is one that we had hoped we should never again have been called upon to make any reference to. We desired to have kept our columns as free of his name as do respectable people who know what he is, keep their houses of his person. But we feel that the exigencies are such that we should not be discharging our duty did we withhold from the people of this Province, many of whom, by reason of their late arrival, are not familiar with his character and doings, an outline of the same. Armed with a smooth and voluble tongue, it would be no matter for surprise that he should make a very favorable impression where he is unknown. In the interest of public morality we lay this sketch before the electorate, especially at Rockwood:—

Henry Joseph Hynes Clarke, as with gusto in those days he subscribed himself, landed in Manitoba in the year 1870. Following close upon his arrival he was elected a member of the first Manitoba Legislative Assembly of the Province, for the Parish of St. Charles, and made Attorney General in the first Government. During the fourth and last session of the first Parliament, the Government was defeated. So soon as the succeeding Government were able to analyze the public affairs they discovered that the capital account of the Province had, during his short term of office, been reduced $158,386 or, in other words, the subsidy had been impaired to the extent of $7,919.30 per annum. An investigation, as far as it was practicable, showed that a most prolific cause of such a result was a process of

Legal (!) Public Robbery

which had been carried on by the Attorney-General in his department of the administration of justice. The vote and voice of the people, as expressed in Parliament, had been absolutely disregarded. For instance, the year 1872 Parliament voted $4,000 for this service, and Attorney-General Clarke expended $9,645.17; for 1873 Parliament voted $12,000, while he spent $23,562.11. The way in which this expenditure was made to so much exceed the estimate, and to the advantage of the head of the department, was, to say the least, ingenious. He managed to appropriate the public funds in large amounts by two modes

Secret Service and Indictments.

During the year 1873 he succeeded in drawing from the public treasury $10,835.10; and during the half of the year 1874 that he remained in office he secured $4,205.50, from the same source. The secret service part of the item is generally considered to have been "clear gain"; at least since Clarke left office it has not been found necessary to spend one dollar in any such business; while Attorney-General he performed the functions of Crown prosecutor, and as such secured to himself $25.00 for every indictment he obtained. To make this "branch" as remunerative as possible, his plan was to have almost every person accused of one substantial offence indicted from three to half-a-dozen times. One or two instances by way of illustration will suffice. At the September, 1873, term of the Court of Queen's Bench, an Indian was charged with burglary, for which he was indicted no less than four times as follows:—house breaking; larceny; stealing money; feloniously breaking and entering a house and stealing therefrom. The case at a subsequent stage broke down on the first indictment, and the accused was discharged. At the same term of the court two persons who had already suffered a term of imprisonment, and were known to be then in the United States, were indicted no less than six times each. The reports of all the courts of those times are but a repetition of this sort of thing; and the instances in which an accused individual was indicted only once are very exceptional. Ninety per cent. of these indictments served no purpose whatever in the interests of justice, they only benefitted Attorney-General Clarke to the extent of $25.00 each, at the expense of the country. The monstrousness of this mode of proceeding is rendered abundantly manifest by the comparison that when Clarke had the conducting of the Crown business it cost the country, as we have shown, $25.00 for each indictment, while since he was deposed, notwithstanding the rapidly increasing population, not one dollar has been "appropriated" under the item of secret service, only $5.00 each has been paid for indictments, and the conduct of the Crown business has cost only about $1,000 per annum, $3,101.60 being the amount for the three years ending at the close of the last fiscal year.

To Make Money,

no matter how, was evidently the prime aim of Attorney-General Clarke. The big "hauls" were, of course, taken from the public chest, as shown. But he evidently allowed no other opportunity to gratify this ambition to pass without attempting to improve it. Many of the readers of the *Free Press* will remember the name "Lord Gordon." These do not need to be reminded that in 1873, an attempt was made to unlawfully convey him to the United States. The attempt, it was alleged, was aided by certain prominent and wealthy Americans that were here at the time upon other business, and they were arrested. These gentlemen being friends of Mr. W. J. Macaulay, of this city, he very naturally interested himself in the case. The whole of the details need not be related; but we have by us a printed sheet issued from Ottawa shortly after the occurrence, which is a recital of the whole affair under the oath of Mr. Macaulay; and it certainly discovers one of the grossest attempted outrages by a public officer extant. It is a case in which the Attorney-General offered to

Barter Justice for Money,

and to commit the very offence for which he was then prosecuting others. Mr. Macaulay in this affidavit says: "While in the Attorney-General's office on the night of the 4th, he said he wished to make me an offer and wanted it to be in strict confidence." He commenced by saying: "Mr. Macaulay, you know that I am a poor man, I want money, and if your friends will guarantee me say $25,000 I will resign as Attorney-General and agree to have Gordon Gordon in New York within twenty days." The affidavit then proceeds to relate how Clarke, through another party, tried to sell the accused persons a property worth not more than $3,000 for $16,000, in consideration for which he would accept "a man of straw for bail," under which they

might get out of the country. However, he failed in all his negotiations; and because Mr. Macaulay did not try to promote Clarke's views in this connection, he formulated a criminal charge against him. Nor did his attempts in this line end here.

"Lord Gordon"

was reported to be wealthy, and Clarke seems to have tried to prosecute him into coming down with his "contributions." Accordingly, upon a series of trumped-up charges, he had him pursued into the North-West Territories, whither he had gone for a hunt, illegally arrested, brought back to Winnipeg, incarcerated, and indicted twice. Immediately that Gordon was arraigned he appealed to the Court in these terms: "My Lord, that Counsel (pointing out the Attorney-General) tried to extort from me ten thousand dollars, and because he failed I am locked up here." Gordon's subsequent explanations, which were abundantly probable, from collateral circumstances, were that upon his being put in the jail, Clarke met him in his cell and demanded of him $10,000 under pain of being handed over to the United States authorities.

Clark's Politics.

Those who were resident in the Province during the first four years of its existence should need no enlightment upon this point. He was pre-eminently a time and self server. When he got control of affairs, the French-speaking people were in a position to dominate, and so long as he was tolerated by them, his manifest determination was to subordinate the rights of all others. The Ontario emigrant was his *bête noir*. His legislation was so devised as to give the new-comers as little say as possible in the affairs of their adopted country; and his public utterances were calculated to be as offensive to them as possible. During the 1872 Session of the Legislature, Clarke introduced a Bill for the registration of voters which excluded from the franchise all persons coming to the Province until they had been here three years. But, opposed by Hon. D. A. Smith, he was forced into a modification of this high-handed attempt to "clip the wings of the Ontario people," to use a favorite expression of his own, in those days. On questions of both principle and sentiment he went the most extreme lengths against the English-speaking new settlers in his mad and reckless, but ultimately vain efforts to keep the solid French support. In 1872 the Ontario Legislature, it will be remembered, offered a reward of $5,000 for the conviction of those who took the life of Thomas Scott, at Fort Garry in 1870. The Manitoba Legislature was sitting at the same time, and when word was received here of the actions of the former body, Attorney-General Clarke brought before the House a resolution of condemnation upon the Legislature of Scott's native Province for their action in this matter. He did so in a speech most outrageous to the feelings of the handful of Ontario people then there, knowing that they were numerically powerless to resent. He designated the Scott murder cry as nothing more than a "hobby horse" of Ontario. He characterized the action of the Ontario Legislature as "nothing less than a piece of impertinence," adding, "the passage of the resolution proposed would give them the snub." In the course of the debate that ensued he said: "It will be seen that Riel, who has been made the scape goat for the whole of what was done and left undone then and for years past was not to blame. He was a man who when chosen stood forward, becoming the mark of all." At another time the question of the 69-70 rebellion came before the House, when Clarke said: "He was prepared to justify their every act, save one, of those commonly called rebels; and that one had been used to its utmost by their enemies. If he had been a resident of the country he would have been a rebel too." After the House rose on one of those occasions a number of the members were assembled in one of the offices, having what is commonly called a "good time," when Clarke, in a moment of supreme gush, dropped on his knees before those assembled, and called God from heaven to witness his declaration that before any person could harm one hair of Louis Riel's head, they should have to walk over his (Clarke's) dead body. However, there was

A Turn in Affairs.

At the opening of the fourth session it was evident that he and the French speaking party were two. The Roman Catholic dignitaries and clergy, whom he had hitherto affected to believe perfectly immaculate, he went far out of his way to refer to in most offensive and insulting terms; and the French speaking element, which before he had labored to keep supreme at all costs, he was prepared to put out of existence entirely had he the power.

Why this Change?

He was the central figure in a social and domestic scandal, which, fortunately for society, as an outrage on public morality, and for inhumanity, seldom had a parallel in a Christian community. His mother church would not tolerate his conduct, and knowing that the day was rapidly approaching when the English speaking people must become dominant at any rate, he turned his back upon his quondam friends, and set about to make up with those whom he had so enormously abused hitherto. But they would have none of him; and he was driven from office by the concentrated action of French and English.

A Heart Rending Tale

Indeed, is the barest outline of this man's perfidy to a woman who, at the time of writing, is lying upon a sick—perhaps dying—bed at the Grand Central Hotel in Winnipeg. That woman, several years ago, he made his wife. At the time, she was possessed of a large amount of money. Actuated by the whole confidence of a devoted wife, she gave him control of her property; and in a very short time, save a comparative trifle she had retained, it was all lost in some wild speculation in Montreal. In 1870, as before related, he came to Manitoba, flourishing the name of Henry Joseph *Hynes* Clarke; Hynes was the maiden name of his wife and he incorporated it with his own; but he has dropped it now. Yes; he has dropped the name and abandoned her from whom he took it. When he came to Manitoba he left his wife in Montreal, with the understanding that at an early day she was to follow. He took up a home in Winnipeg with a highly respectable private family, with the members of which, by means of his oily tongue and *suave* manner, he soon established himself most favorably. The Government of which he was a member having some bridges to construct in distant parts of the Province, and his host being a practical man was entrusted with the work, which necessitated his absence from home for considerable periods. During his absence Clarke was sapping the foundations of his domestic happiness and ruining his home by weaning from him the affections of his wife. Returning home upon one occasion he found his wife not there, and was told something to the effect that she had been sent for by friends in the east and had gone to visit them, Clarke explaining that he had lent her the money to go with. This seemed satisfactory. A short time after Clarke left to visit Montreal, and in due course suggestive stories were brought home by those who had met the Attorney-General and the woman last referred to, travelling in the United States. Little by little the full truth forced itself upon the master of the house in which Clarke had found a home, his wife had deserted him, and taken up with his guest. Clarke, however, turned up in Montreal and met his wife; but she at once detected something very different in his manner to that of old. Some time after she came to Manitoba with him; but it was only after patiently suffering unkindness at his hands for more than a year that she came to understand the true state of affairs. That may be briefly told. Clarke was keeping up an affectionate (!) correspondence with his later attachment, and supplying her with money for sustenance, while his loyal and once happy, but now wretched, wife was suffering more and more ill-treatment from him. In 1874, Clarke was voted out of office, and he immediately left the country with his ill-gotten gains from the public treasury, deserting his wife entirely. It soon became generally known that Clarke and the wife whom he had seduced from her husband, were living as husband and wife on the Pacific Coast, and luxuriating on mis-appro-

priated portions of the Manitoba subsidy. Wealth illy acquired, however, is seldom abiding. So it was in this case; and then, forsooth, in 1877, as though Clarke had not made his poor deserted wife suffer enough, and as though the woman he had robbed her husband of, had not sufficiently wrecked him by her conduct, they came back to Winnipeg to brazen out their shame in the very community where were residing the particular victims of their infidelity. The outraged husband has since fled from the scenes of earlier and happier associations—before the despoiled of his household had crossed his threshold—and taken up his abode in the farther west; and the broken-hearted wife, utterly hopeless of comfort this side of the grave, is pining away and hastening beyond that bourne whence no traveller returns. But, thus far, their determined efforts to force themselves into respectable recognition has utterly failed, and they are righteously surrounded by a social atmosphere of supreme contempt. Clarke has, ever since his return, been trying to get into public life again, and has knocked at the door of nearly half-a-dozen constituencies, one by one of which gave him to understand the same as the respectable householders of Winnipeg—you cannot pass our portals. St. Agathe said no, St. Vital said no, St. Anne said no, St. James said no, and now, having utterly failed in these old settlers' constituencies, he is knocking at the door of Rockwood, a division inhabited by Ontario people—the class of all others to whom his public career was most obnoxious—and, for their good name let us hope, whose moral sense is not less acute than that of their fellow citizens in the constituencies named.

Yet this Mr. Clarke, whose life is stained with every wickedness and whose character is black with every infamy, unredeemed by a single virtue, presumes *ex cathedra, pro bono publico,* to arraign the Chief Justice of Manitoba for being "so notoriously partial, dishonest and unjust in his judgments and decisions, that suitors in the said Court know and feel that their rights are not safe, and the people of the Province of Manitoba have no confidence in, or respect for, the judgments or decisions, &c."

To me it was incomprehensible how, in the House of Commons, of which I had been for several years a member, and to many of whose members, at present constituted, I was well known, a member could be found to present such a petition. But I have learned how this was brought about. After trying for a long time, without success, to get a member to present the petition, Mr. Clarke at last hit upon this scheme. He went to Mr. Royal, an old enemy, and told him, if he would present this petition to the House of Commons, he would forego having certain papers, exposing Mr. Royal in the Indian Commission Investigation *in re* Provencher, moved for in the House. Mr. Royal accepted the overture and presented the petition. This statement is based on a current rumor at the time, which has received no contradiction; and the following correspondence between Mr. Thibeaudeau, a respectable barrister of eight or nine years standing in Winnipeg, and myself:—

"WINNIPEG, 17th July, 1881.

"DEAR SIR,—It has been intimated to me that Mr. Clarke, when he came up from Ottawa, last winter, to get signatures to his petition against me, showed the petition and asked your signature to it; and upon your refusing to sign it, you remarked to him that you did not believe he could get any member of the House to present such a petition; and, that he replied, that he had already arranged that. In consideration of his (Clarke's) undertaking and agreeing to forego and to abandon having certain papers, exposing the frauds of Mr. Royal, developed in the Indian Commission *in re* Provencher, moved for and brought down to the House, Mr. Royal had agreed to present the petition—that he had that all fixed.

"It seems that subsequently, after Mr. Clarke's return to Ottawa, Mr. Royal presented the petition.

"Will you be good enough to inform me what communications (if any) on this subject Mr. Clarke made to you.

"I am, Dear Sir, your obedient servant,

"W. B. THIBAUDEAU, Esq., Barrister, &c., Winnipeg." "E. B. WOOD.

REPLY.

"WINNIPEG, 19th July, 1881.

"DEAR SIR,—I beg to acknowledge the receipt of yours of the 17th instant, and in reply have to state,—

"In the early winter of 1880, Mr. H. J. Clarke openly stated, that the object of his then proposed trip to Ottawa, was to have the matter relating to Mr. Royal's connection with the Provencher Indian investigation brought before the House of Commons, and to have him prosecuted and expelled from the House. No one could speak more bitterly of another than he did of Mr. Royal.

"On his (Clarke's) arrival from Ottawa, in the winter, he asked me to sign the petition against you, which I declined doing. I suggested that he could get no member to present it. He answered: 'That is all right; Royal will do it, if I will not press the Provencher charges against him.'

"I did not regard his conversation as being in any way private, as it was said in such a way that any one paying any attention in the premises, could have heard what he said; and, besides, I had previously heard the same thing on the streets.

"I have the honor to be, Sir, your obedient servant,

"W. B. THIBAUDEAU.

"Hon. Chief Justice WOOD."

Thus, it seems, these two worthies have now become friends—*pars nobile fratrum!* As indicating what sort of a man this Mr. Royal is, and with what he was charged, in respect of which this Mr. Clarke threatened to have him exposed, I give two articles from a sort of quasi private newspaper which Mr. Clarke published in Winnipeg, for a few months, in the winter of 1878-79—a file of which, I suppose, will be found in the Library. It is called *The Manitoba Gazette.*

"ROYAL & Co."

"The above named patent, outside combination is at present making most powerful efforts to secure the votes of the people at the approaching election. Royal is about among the French half-breeds, preaching to them the paramount necessity of supporting him, Joe, the Godly, if they don't want to see the downfall of the Catholic Church, the French language and the Catholic separate schools in Manitoba. Yes, says holy Joseph, if you want to uphold your holy church, your glorious French language and your Catholic schools, if you wish to defend yourselves against those who are trying to take from you all these things,—you must support the Royal Norquay government, and must elect men we recommend to you. Beware of any one or of any party that tries to divide by opposing us. Their object is to get us weakened, and then you will be blocked out.

"Now we are aware, that in this bigoted howl, Royal is assisted only by the pro-clerical who are with him as their visible head, form the politico-religious ring which now controls the Province. It is useless to deny this, facts speak far louder than words. For the past eight years this man Royal has been pushed forward and sustained in power by those who know him well, who despise as a man, but who find in him just the tool they require. They know that during the last two years he has been detected in public frauds amounting away up among the tens of thousands of dollars. They know that he has been on the very point of exposure for a breach of trust of the most shameful kind, and was saved only by a silent settlement of the matter—an Archbishop indorsing promissory notes to a large amount to save his protege from arrest at the suit of a Frenchman from Montana, who was deceived by the order of sanctity by which he found Royal surrounded, and thus fell a victim to his too great reliance on outward signs and appearances.

The Commission held here last Fall on the frauds in the Indian Bureau, disclosed a system of swindling of the most impudent and glaring kind, over $42,000 were shown to have been stolen from the department, and in almost every case Joseph

Royal was the most prominent actor in the names of others, without their knowledge or consent. Royal made up false accounts to large amounts, signing with his own name as witness to their being genuine; got warrants and cheques from the Government in payment of such accounts payable to the order of the persons in whose names he swindled the department, and he deliberately endorsed the names on such cheques and got the proceeds from the bank here at Winnipeg. We will just give an example or two where the goods, to the amount of thousands of dollars, were found to have been sold to the Government by a man named Guy; his accounts, vouchers and receipts were produced, all duly signed with his name and certified by Joseph Royal as witness; cheques on the bank here payable to the order of Guy were presented at the bank endorsed with the name of Guy, and were duly paid. Now, before the Commissioners, Guy, under oath, swore that he never sold anything to the Government—that he never had any contract with or for the Government in his life, that he did not know how to write his name, that he never made out an account against the Government, never signed a receipt, never endorsed a cheque or received money on a cheque at the bank; that in fact he was simply a servant man in the employment of the Hon. Joseph Royal on small monthly wages. Now, every one of the papers produced, every receipt and cheque, had Guy's name forged on it by Joseph Royal, who received the money.

"The case of David Champagne is another proof of the honesty of Joseph Royal, the Godly. Here it is, Champagne and Poitras, with men and carts, were employed by the Indian Agent to take forty head of cattle to the Lake of the Woods. The amounts they were paid are: David Champagne $72, Poitras $40, 3 men, $20 each, $60, total $175. When Champagne was summoned before the Commission what was his horror and astonishment to find that his name had been forged to a receipt for $401! and the forged name witnessed to by the Hon. Joseph Royal, the amount stolen on this litttle transaction being $226.60. But more follows: there was another charge made against the Government for the same service by Guy-forged vouchers and receipts being produced, all certified or witnessed by the Hon. Joseph Royal, and $400 more stolen from the Indian Department, for the bringing of the same 400 head of cattle to the Lake of the Woods. Thus $627 were actually stolen in a most infamous manner.

"We might go on through whole columns to give the details of the thefts perpetrated by the ring of which Joseph Royal was the head and ring-leader. James Tremble's name, for instance, is forged to receipts for thousands of dollars which he never got and never heard of till he was on oath before the Commissioners and had the forged papers shown to him. Joseph Royal is the man who wrote his name and got the money.

"How then can the people, who pretend to be the directors and guides of other people's consciences, how can the independent people of this Province pretend to desire a proper and honest administration of public affairs, if they suffer, not Royal only, but any manner of party men who will support a Government with Royal at the head of it. Can pure water flow from a rotten source? Can a public man who is known to be guilty of gross dishonesty be trusted with public interests? Can men like Norquay, who allow themselves to be made tools of such men as Royal, be trusted with grave public duties? These are questions to be answered by the voters and electors.

(NOVEMBER 16TH, 1878.)

Honorable Joseph Royal and his other self N. D. Gagnier & Co.

"Our readers have been told a little, a very little indeed, of what might be told about the various offences that have been proved against the honorable and highly respected French Canadian gentleman, who now, as he has done for the past four years, rules this Province in the interest of himself and his Grace of St. Boniface.

"We now propose to submit, for the cool consideration of the electors of this country, a statement of facts, which will prove beyond any doubt that Joseph Royal, the Godly, has been as busy cheating the people of Manitoba as he has been cheating the Indians of the North-West, during the four past years. We will to-day let in the light on the Hon. Joseph Royal, as he plunders the treasury under the name of 'N. D. Gagnier & Co.' in the stationery business, and of a 'N. D. Gagnier & Co.' in the printing business; and, as our information is given by Mr. N. D. Gagnier himself, under oath in a declaration duly sworn before His Lordship Mr. Justice McKeagney, on the 19th day of August last, we defy any kind of contradiction of our statements. On the floor of the House last Session of the Local Legislature, during the debate on Supply, Mr. Martin, M.P.P. for Ste. Agathe, when the item of printing came up, charged the Hon. Joseph Royal, Attorney General, with being personally interested in *Le Metis* newspaper, and in the printing done in *Le Metis* newspaper, and in the printing done at the office of that paper, for the Government. Mr. Royal repudiated the statement, charging Mr. Martin with stating that which he knew to be untrue, and most positively declared that he, Royal, had no interest whatever, directly or indirectly, in the *Le Metis* nor in the printing done at that office, nor had any interest in any Government printing. This he said was only another of the many slanderous assertions by the member of St. Agathe to insult him, the Hon. Joseph Royal! In fact, the Hon. Mr. Royal was foaming with anger, deeply insulted, even by suspicion of his being capable of holding contracts with the Government of which he himself was a member, if not in fact, the whole Government. Now, at the time the Hon. Mr. Royal contradicted Mr. Martin's statement, he was contradicting the truth, and in doing so he was uttering falsehoods. He knew that for years he had been doing all the printing in French and a large part of the job printing in English for the Government of which he was a member. Here is a paragraph from N. D. Gagnier's statement under oath, on that subject: '4th. That on or about the 24th day of March, 1877, the said Hon. Joseph Royal and myself under the co-partnership name of 'N. D. Gagnier & Co.,' entered into a contract with the Government of Manitoba of which the said Hon. Joseph Royal was then and is still a member for departmental printing, advertizing in *Le Metis*, and for book and job work, which contract is still in full force; and tenders for which contract were prepared by the said Hon. Joseph Royal in his own handwriting addressed to Alexander Begg, Queen's Printer. Now where is the Hon. Mr. Royal's word of honor? As a member of the House he was acting the part of a cheat of the very worst kind; as a printer he charged a hundred per cent. over the real value of the work; as a member of the Government he was also a member of the board of audit, passed his own printing accounts, got his cheques payable to 'N. D. Gagnier & Co.,' or order, from his friend the Premier R. A. Davis, and after endorsing 'N. D. Gagnier and Co.'s' name on the cheques, got the money at the Merchant's Bank. Here is a sample of the accounts that were thus taken from the Province of Manitoba by the Hon. Joseph Royal under the name of 'N. D. Gagnier & Co.'

1876, Subscription for *Le Metis*	$	7 50
Stationery for office		174 00
do		600 00
Printing blanks		422 00
Printing		7,775 60
1877, Subscription for *Le Metis*		7 50
Stationery for office		714 00
do		1,102 80
Printing		4,329 71
Paper		61 00
	$	15,208 61

"We can only find room in the present issue for one example of the Hon. Mr. Royal's stealing under the name of 'N. D. Gagnier' with Co. left out. On the 2nd

of February last, the Government of Manitoba was charged for stationery by Hon. Mr. Royal, alias 'N. D. Gagnier' $14.00, $70.00, among other items of the account is this one:—

4 doz. Roger's knives @ $20.00..... $85 00

"Now, how did two dozen members come to require four dozen knives to begin with; and how is it that $20.00 a doz. is charged, when the same knife can be bought by retail for 80 cents? The answer to the conundrum is this: Joseph Rymal first cheated the Government of which he was a member, out of a couple of dozen of knives, on the count only, and then he cheated the Province out of at least $40.00 on the penknives alone, for one session. We have the originals of Mr. Royal's printing accounts which our friends and the public can examine."

Here we have the character of this Mr. Royal given by this Mr. Clarke. I do not pretend to endorse the charges; but I strongly suspect that the developments, in respect of Mr. Royal, in the Indian—Provencher—investigation, were most damaging. I have no doubt he was conscious of this, and was exceedingly anxious to avoid the exposure; and gladly availed himself of the proposition made to him by Mr. Clarke to present Clarke's petition to the House of Commons, to avoid, as he supposed, Mr. Clarke getting some member to move for the papers, disclosing his alleged frauds and crimes in the Indian—Provencher—commission.

Vain hope! for I see by the Votes and Proceedings of the House of Commons, that Mr. Charlton, a few days after, put a notice on the paper for these dreaded papers, but which was too late to be reached last Session, but will doubtless be renewed next Session; and I hope it may not be so, but I greatly fear that the revelations of these papers will fasten on Mr. Royal grave irregularities, and convict him of peculation and fraud on the Crown.

With this, I am well aware the accusations against me, where they consist of specific acts, have nothing to do; but where they are general in their nature and are not susceptible of disproval by evidence of fact, but rest on the affirmation of the petitioners and the member who presented the petition to the House on the one hand, and on my denial on the other hand, it is important to know thoroughly the character of the petitioners and of the member of the House who was induced to present such a petition, and the motives he had in view and the reasons operating on his mind leading and impelling to such an extraordinary act. In the light of what has been said, I think the inference may be fairly drawn that it is at least more than doubtful if Mr. Royal was moved in this matter by a sense of right, truth or justice.

By these men and by these means is my character attacked and my reputation sought to be taken away with impunity; and, in any event, I must, it seems, submit in silence to the irreparable wrong.

From the first day I assumed my judicial duties to this day it so happens that I have not tried and disposed of a single case involving any dispute or controversy, but the evidence has been carefully taken down in writing and the judgment or decision reduced to writing at the time of giving the judgment, with all the reasons *pro* and *contra* with authorities cited; nor have I given a single judgment in term on any disputed matter but I have reduced it to writing, going into and exhausting the subject. These decisions and judgments are filed away in the Clerk's office, and are accessible to the whole profession at pleasure. Nay, even in the County Court, which is analagous to the Division Court of Ontario, but has jurisdiction to $100 in actions *ex delicto* and to $250 in actions *ex contractu*, so careful have I been that the reasons and grounds of all my decisions should "be known and read of all men," that I have, in every case tried before me in which there was any real controversy in law or fact, taken down the evidence in writing in full and given judgments in writing, which are on file in Clerk's offices. The labor has been immense, yet it has been done by me, and I think well done, in accordance with justice according to law. In taking this course I had no idea of such an attack as this, but now, providentially, I can point to written evidence and written judgements in every case I have tried and decided, or

in which I have given judgment, since I have been in Manitoba; and what is more, I have the serene satisfaction of believing—I had almost said of knowing—that they are all right. At all events, there they are, and they speak for themselves. I am willing to be judged by them. *Scripta manent.*

Judges possess no infallibility. That they are liable to err is inseparable from the infirmity of human nature. In many cases, however, in which inferior Courts are overruled by superior Courts of review, we cannot say as of a mathematical proposition, one is truth, another is error; all that we can say is that there is an honest difference of opinion, and that the decision of the Court of review is to be decisive, not because it is a demonstration of the truth, but because it has constitutional or legislative authority. The numerous cases in appeal formerly to the Exchequer Chamber, now to the Court of Appeal under the Judicature Act, to the Judicial Committee of the Privy Council, to the House of Lords in England, and to the Supreme Court in Canada, and the result of these several appeals, shows the diversity of opinion which prevails among the most learned and gifted men in the world. I do not profess, with all the care, learning and assiduity I can command, to be exempt from the infirmity of liability to error in every one of the thousands of contested cases that I have decided for now upwards of the seven years that I have been Chief Justice of Manitoba; but I do profess that I have striven most anxiously that all of my decisions should be right, not according to my notions of equity and right, but according to equity and right as laid down and settled in decisions and judgments made and delivered in courts of authority by the great oracles of the law, and I believe they are.

It seems superfluous to mention a self-evident proposition, that in every contested action at law or suit in equity, one or the other of the parties must fail. For the sake of judges, I have sometimes felt as if I could wish this was not the ordination of nature. There seems no way out of the difficulty of the necessity of a contested cause being decided for the plaintiff or for the defendant, unless the middle course of Petrus Stuyvesant, the Dutch Governor, be adopted, of dismissing the case against both parties and ordering the constable to pay the costs. This necessity of deciding the case in favor of one or the other party, or against one or the other party, has at all times subjected courts and judges, more or less to, sometimes, intemperate criticism, both on the part of lawyers and clients. This intemperance of criticism in a new state of society where the judge is, from circumstances which surround him, necessarily brought into more immediate converse and contact with the people, is far more liable to be indulged in to excess than in older and more settled communities, where the judge is more removed from the multitude, and where the expression of the sentiments and opinions of men are more restrained by an enlightened conversation and by a proper sense of responsibility.

I do not wish to disguise the fact that very often both the unsuccessful party and his counsel have "in talk outside"—as is almost always in all countries done—spoken complainingly and sometimes censoriously at particular decisions of the courts. I do not know it for a fact, but I think it not all unlikely, such has been done in this Province. This is a practice very common, I believe, both in Canada and in England, immediately after a decision, arising from disappointment at defeat; but reflection and reason soon displace and remove it. I, like all other judges, I suppose, have not been, nor shall ever be, exempt from this innocent and harmless criticism. It is a relief to the disappointed; it is no injury to the judge; it is a sort of safety valve to pent up feelings of irritation.

I have made these additional remarks to show how any one may, in a community like that we have here, gather up rumors of dissatisfaction at the decision of the judge or of the court. The decisions referred to in the course of the observations on the several paragraphs of Mr. Clarke's petition, will, to a surprising extent, illustrate this point.

F.

CANADA, PROVINCE OF MANITOBA.

IN THE COURT OF QUEEN'S BENCH.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c.

The Queen, by Her attorney, David Marr Walker, Esquire, *vs.* Henriette Anderson, by her attorney, Henry Joseph Clarke.

And now at this day come as well the said David Marr Walker, Esquire, who for Our said Lady the Queen, prosecutes in this behalf, as the said Henrietta Anderson in her own proper person and the jury thereupon empanelled likewise come, and thereupon the said Henrietta Anderson challenges the array of the said panel because she says the said panel was arrayed and returned by the said Colin Inkster, Esquire, now and at the time of the making of the array aforesaid, Sheriff of the said Province of Manitoba, which said Sheriff has not by his return of the panel of Grand Jurors now before the honorable Court, set forth the name, surname, trade or calling, and place of residence or domicile of each of the said Grand Jurors, as required by sub-section 2, sec. 11 of chap. 3, 39 Vic. Statutes of Manitoba, and this she is ready to verify, whereupon she prays for judgment, and that the said panel may be quashed.

Entered this 16th day of October, A.D. 1877.

HENRY J. CLARKE, Attorney for Anderson.

IN THE COURT OF QUEEN'S BENCH—CROWN SIDE.

THE QUEEN *vs.* HENRIETTE ANDERSON.

The sixteenth day of October in the year of Our Lord, 1877.

And the said David Marr Walker says that the said challenge of the said Henry Joseph Clarke to the array of the panel aforesaid is not sufficient in law to quash the array of the panel aforesaid, and that there is no necessity for him, the said David Marr Walker, nor is he obliged by the law of the land to answer to the said challenge in manner and form as it is above alleged.

Wherefore he prays judgment, and that the array of the said panel may be affirmed, etc.

D. M. WALKER. C. C.

And the said Henry J. Clarke says that the said challenge is sufficient in law to quash the said array of the said grand jurors: wherefore, &c.

JUDGMENT.

REGINA *vs.* HENRIETTE ANDERSON, OCT. 16th, 1877.

It is proper to observe that in considering the question raised by the challenge and the demurrer thereto, the panel of grand jurors annexed to the writ of *venire facias*, and returned into court here, and forming a record of the court, must be read along with the challenge; and for the purposes of the determination of the question before me, be deemed and taken to form part thereof. I will, therefore, first look at the panel. It is in the words and figures following :—

PANEL OF GRAND JURORS.

Summoned to serve at the Court of Queen's Bench, Oyer and Terminer and General Gaol Delivery to be holden at Winnipeg, in the County of Selkirk, and Province

of Manitoba, on Tuesday the sixteenth day of October, A.D., 1877, under and by virtue of a writ of *venire facias* issued on the first day of September, A.D., 1877, in accordance with the law in that behalf, and in the forty-first year of our reign.

English Jurors.

No.	Name.	Residence.	Addition.	Remarks.
1	Alexr. Brown	Winnipeg	Carpenter	
2	Wm. W. Banning	do	Mill Owner	
3	James Broadfoot	Westbourne	Farmer	
4	Michael Blake	Portage la Prairie	Hotel Keeper	
5	Thos. Dalzell	High Bluff	Farmer	
6	Robt. Bell	Rockwood	do	
7	James Barclay	do	Contractor	
8	J. F. Tennant	St. Agathe	Hotel Keeper	
9	Thomas Dunlop	Winnipeg	Freighter	
10	Matthew Cook	Poplar Point	Farmer	Not in the country.
11	Thomas Collins	Westbourne	do	
12	Daniel Clink	Springfield	do	
13	George Dick	do	do	
14	J. B. White	St. Agathe	do	
15	Wm. Harvey	Winnipeg	Liveryman	
16	Fred. A. Bird	Portage la Prairie	Trader	
17	Abraham Evans	Poplar Point	Farmer	

French Jurors.

1	H. H. Bertrand	Winnipeg	Merchant	
2	J. B. Daoust	Ste. Anne	Farmer	Not in the country.
3	Patrice Breland	St. F. X. East	Trader	do
4	Cyril Marchand	St. Norbert	Farmer	
5	Alexr. Pagé	St. F. X. East	Merchant	do
6	François Gingras	Winnipeg	Farmer	
7	François Pouissant	Ste. Anne	do	do
8	Sévère Demerais	Ste. Agathe	Carpenter	
9	Cyprien Fortin	Ste. Anne	Farmer	
10	F. X. Pagé	St. F. X. East	do	
11	J. B. Gervais	St. Vital	do	
12	Jean Lesperance	St. F. X. East		

COLIN INKSTER, Sheriff.

Sheriff's Office, Winnipeg, 16th October, 1877.

In juxtaposition with the panel, I will cite the whole clause in the Statute relied on by Mr. Clarke, 39 Vic., chap. 3, sec. 11, sub-sec. 2:—

Sub-section 1.—"The selectors, or any of them, shall place the ballots promiscuously in a box or urn to be procured by them for that purpose, and shall cause the box or urn to be shaken so as sufficiently to mix the ballots, and shall then openly draw from the said box or urn indiscriminately one of the said ballots, whereupon one of the selectors present shall immediately declare aloud the name of the person so ballotted."

Sub-section 2.—"And thereupon the name, surname, trade or calling and place of residence or domicile of the person whose name has been so selected, shall be written down on a sheet of paper provided for that purpose."

Sub-section 3.—"Which being done, the selectors shall proceed in like manner with the ballot, and dispose of other names from the said box or urn until the whole

number has been exhausted; whereupon such ballot and selection shall form the list of persons as petit jurors for each judicial county."

It is not a little surprising that the counsel for the challenge, in express terms, relies upon sub-sec. 2, sec. 11 of chap. 3, 39 Vic., Statutes of Manitoba, as the foundation of his challenge against the panel of grand jurors struck by the Sheriff, when not one word in the whole of section 11 refers either to the grand jury or to the Sheriff, in any manner whatever. It is not the less surprising that a provision in the Statute, which, in the most explicit terms, is exclusively limited and confined to the course to be pursued by the selectors in preparing the jury lists of petit jurors, should have been seized upon as the basis of a charge against the Sheriff in striking a panel of grand jurors in the ordinary course of his business and the discharge of his duty as Sheriff, from the jurors' book in his possession made up and attested according to law.

Directions to the selectors for preparation and making of the lists of the grand jurors, are contained in the ninth section of the Statute, and are entirely dissimilar from those comprised in the eleventh section respecting the preparing and making of the lists of petit jurors. The course of procedure and the manner of preparing and making panels both for petit jurors and grand jurors by the sheriff for any Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*, are pointed out and defined by sections 23 and 24. Taking, therefore, the allegations in the challenge, along with the provisions of the Statutes, into consideration, it is impossible to say that the finding of the challenge in the affirmative or negative would be of any avail whatever in establishing the partiality or default of the sheriff, or any facts whence partiality, default or favoritism in the sheriff, in respect of the panel, could be educed; and, therefore, the panel of the grand jury would remain equally unaffected whichever way the issue should be found; the issue in fact, if issue had been taken, being perfectly immaterial. On this ground alone the demurrer must be allowed. But waiving all the difficulty I have indicated as arising under the Statute, the challenge is too general.

It does not specify with reasonable certainty wherein, or in what respect, "the name, surname, trade and calling, and place of residence, of each of the said grand jurors" is defective or objectionable. The exception is in general terms to the names, surnames, trade and calling, and place of residence or domicile of each of the grand jurors or the whole panel.

In looking at the panel which must be read along with the allegation in the challenge, in the case of every juror on the panel, I find his name, surname, trade or calling, and place of residence or domicile, are stated. It is, therefore, impossible to know from the general form in which the exception is taken, what defect is intended or aimed at, or in what particular or particulars the panel does not set forth the name, surname, trade or calling, and place of residence or domicile of each juror. It may be, and probably is the fact, that the defects aimed at are in the Christian names of some of the jurors not being written in full, or only the initial or initials being given, or in the trade or calling or place of residence or domicile being expressed by initial letters, contraction, or otherwise.

If this be the ground of objection it should have been distinctly stated, and there should have been an allegation of fact showing that this had arisen through the default of the Sheriff, and that thereby Henrietta Anderson was prejudiced in respect of the whole panel. On this point, in passing, I may say once for all, I do not think any such things taken by themselves as I have suggested that it is possible the challenge may aim at, form any ground whatever for challenge to the array. I think the challenge must be disallowed for being too general.

In this respect it resembles Rex. *vs* Hughes, 1 Car. and K. 235. The challenge alleges that the Sheriff has not set forth, the name, surname, trade and calling, and place of residence or domicile of each grand juror as required by sub-section 2, section 11, of chapter 3, 39th Victoria, but it does not allege in what respect the Sheriff has failed to comply with the clause of the Act referred to; and as there is no allegation that the panel was returned partially or without indifferency, none can be

inferred; and I do not see how a traverse could be taken on the allegation in the challenge so as to raise any definite and clear issue.

The movement, however, in a public point of view, is of sufficient importance to justify a more thorough examination of this whole subject.

A challenge to jurors is two-fold: either to the array or to the polls. A challenge to the array is to except to all persons arrayed or impanelled; and that to the polls is to except to particular jurors. Panel used in this connection, properly means a piece of parchment or paper, or schedule, containing the names of persons summoned by the Sheriff as jurors. The jurors names are ranked or ranged in the panel, one under another; which order or ranking the jury, when completed, is called array—as we say, battle array, for the order of battle. Therefore, a challenge to the array of the panel, is at once a challenge or exception against all the persons so arrayed or impanelled or against the whole panel. This kind of challenge appears from the authorities to be limited to partiality or default of the Sheriff, Coroner, or other officer, who makes the return. (5 Bac., Abdg. Juries E; 1 Co. on Lit. 156*a*.)

A challenge to the array is two-fold; in that it is either a principal cause of challenge, or to the favor, like that to the polls or to particular jurors; for it was thought there could be no better rule to ascertain what should be a proper challenge to the officer than what was a proper challenge to each juror's partiality, for it was not supposed there was a jury *per quos rei veritas melius sciri poterit,* unless they were selected by persons absolutely indifferent. (Co. Lit. 156*a*.)

It has been urged by counsel, that a challenge to the array does not lie in respect of the grand jury panel, but is limited to the petit jury. No authority for this proposition is cited; and, indeed, no satisfactory reason for the distinction has been suggested.

On principle and the reason of the thing, I am disposed to think that a challenge lies both to the array of the grand jury and also to the polls for favor or other legal objection, as in the case of the petit jury. On this point, I have not been referred to any authorities, one way or the other. As at present advised and for the purposes of the case before me, I therefore assume that it is competent for any person charged with an indictable offence, and against whom a bill of indictment is to be preferred before the grand jury, to challenge the array or to challenge the idividual jurors at the polls, and that these challenges must be met by the Crown, and be by the Court determined according to law.

In the present case the challenge is to the array. I shall, therefore, in so far as I can confine my observations to that form of challenge. It is to be noted that challenge to the array is an exception against all persons included in the panel, in respect of the partiality or the default of the sheriff, Coroner or officer who made the return. This challenge is divided into a principal cause of challenge, and challenge for favor. Instances of a principal cause are partiality, if the Sheriff or other officer be of kindred or affinity to the plaintiff or defendant, if the affinity continue, if any one or more of the jury be returned at either parties denomination or any one, that he be more favorable to the one party than the other, if the plaintiff or defendant have an action of battery against the Sheriff, or the Sheriff against either party, if the plaintiff or defendant have an action of debt against the Sheriff, or if the Sheriff have parcel of the land depending on the same title, if the Sheriff be under the distress of either party, if the Sheriff or his bailiff who returned the jury, be of either counsel, attorney, officer in fee or robes, or servant of either party, gossip or arbitrator in the same matter, and treated thereof. (1 Co. Lit. 156 *a*; 5 Bac. Abridg. E. 343.)

The foregoing are some of the grounds, enumerated in the authorities to which I have referred, as being comprised in the principal cause of challenge to the array in respect of partiality. It is said where a subject may challenge the array for want of indifference, there the Queen, being a party, may also challenge for the same cause, as for kindred or that the Sheriff hath part of the land or the like.

But an examination of the history of the jury system, and the practice in respect of the same, and the various Statutes passed and in force in relation thereto, down to

a comparatively recent period, it will be found that, during the times the foregoing and other grounds of exception were established, discretionary power of selecting jurors, to a large extent, was vested in the Sheriff; and hence, any state, condition or relation of persons or things, whence bias or want of indifference in the Sheriff in making the selection, might be inferred, was held sufficient to set aside the whole panel: for it was properly assumed that one fact being established, showing partiality in respect of the selection and return of even one juror, proved a want of indifference on the part of the Sheriff in the act of the selection and return of all the jurors, and, therefore, vitiated the whole panel.

Modern legislation, however, has removed the discretionary power from the Sheriff, and prescribed the mode of selecting the panel from jury lists prepared for him, in such precise terms as to render it almost impossible for the Sheriff to be open to most of the exceptions which in the olden times were raised against the return of the *venire facias;* and, as a consequence, much of the practice and many of the exceptions against the array of jurors, in the olden time, have become almost if not quite obsolete.

Challenge for default of the Sheriff is another ground of exception to the whole array. I will refer to some instances under the head mentioned in Co. Lit. and in Bac.'s Abridg.: When the array of a panel is returned by a bailiff of a franchise, and the Sheriff returns it as of himself, this shall be quashed; but if a Sheriff return a jury within a liberty, this is good, and the lord of the franchise is driven to his remedy against him; if a peer of the realm or lord of parliament be demandant, tenant or defendant, then must a knight be returned of his jury, be he lord spiritual or temporal, or else the array may be quashed; but if he be returned, although he appear not, yet the jury may be taken of the residue; and if others be joined with the lord of parliament, yet if there be no knight returned, the array shall be quashed against all; if two strangers make a panel, and not in favorable manner for the one party or the other, and the Sheriff returns the same, and the array be challenged for this cause, it is adjudged good, if the Sheriff of a liberty return any out of his franchise, the array shall be quashed, as an array returned by one that hath no franchise shall be quashed. (Co. Lit. Bac. Ab.)

In the foregoing cases, as illustrative of the grounds of challenge for default of the Sheriff, the distinction between the grounds of partiality and default are clearly seen. The former is confined to, and arises from, an improper or unfair state of mind or intention of the Sheriff in the act of the selection of persons composing the panel; the latter is a failure of duty arising from mistake, omission, neglect or inadvertence, intentional or unintentional.

Grounds of challenge for default, in consequence of more recent legislation, as I have already remarked in reference to the causes of challenge for partiality, are now of rare occurrence; still, even in the present state of the law, they may arise.

A substantial departure from the direction given to, and the rules imposed upon, the Sheriff by the Statute in the selection and return of the jury, whether intentional or not, and whether free from all partiality or not, would probably lay the panel returned open to challenge on the ground of default.

There is still another ground of challenge to the array. It is said to be for favor. It is nearly allied to that of partiality, though distinguishable from it, and therefore is said not to be a principal challenge. It seems to arise from favoritism from the relative position of the Sheriff and one or other of the parties in litigation. And it is said in the books that this kind of challenge must be left to the discretion and conscience of the triers. The causes of this challenge are such as imply, at least, a probability of bias or partiality in the Sheriff without that being a necessary consequence, and therefore it does not come within the category of a principal challenge. Thus: that the plaintiff or defendant is the tenant to the Sheriff, or that the son of the Sheriff has married the daughter of the plaintiff or defendant or the like, but if the Sheriff himself be tenant to either party or be kindred or affinity to either party, these would be causes of a principal challenge; inasmuch as it is assumed, from the latter relationship being established, it is to be presumed that

partiality or want of indifference reasonably follows; but that the former may exist and yet that no partiality or favoritism may intervene; and, therefore, in these latter cases, the existence of favoritism must be found by triers as a fact arising out of and in consequence of the relative position of the Sheriff to one or another of the parties in the manner suggested.

It seems to be the rule that the challenge must be made before the jury are sworn.

No challenge can be taken either to the array or the polls until a full jury have appeared. (Rex *vs.* Edmonds, 4 B. & A. 471).

The disallowing a challenge is not a ground for a new trial, but for a *venire de novo;* and every challenge must be propounded in such a way as that it may be put at the time on the *nisi prius* record, so that the adverse party may either demur, or counterplead or deny the matter of the challenge, in which last case only triers are to be appointed.

Where the challenges were not put upon the record, the defendants were held not in a condition to ask the opinion of the Court as a matter of right upon their sufficiency. (5 Ba. Ab. Juries, E. 346; Rex *vs.* Edmonds, 4 B. & A. 471).

In the case of a challenge of the array, it lies in the discretion of the Court how it shall be tried.

Sometimes it is done by two attorneys and sometimes by two of the jury; with this difference: that if the challenge be for kindred in the Sheriff, it is said to be more fit to be tried by two of the jury; if the challenge be founded in favor or partiality, then by any two attorneys assigned thereunto by the Court. (Co. Lit. 158; 5 Bac. Ab. Juries E. 566).

The truth of the matter alleged as cause must be made out by witnesses to the satisfaction of the triers. If there be a demurrer to a challenge, and it be debated and the judge overrule it, it is entered upon the original record, and if at *nisi prius*, it appears upon the *postea* what the Judge hath done. But if the Judge overrule the challenge upon debate without demurrer, as he may do in any case, then the proper remedy of the exceptor is by a bill of exceptions. It would seem that, to avoid delay in case of principal challenge in respect of partiality or default of the Sheriff, it would be advisable for the Judge himself to investigate the truth of the matters alleged, and to find the facts and deal with the challenge accordingly; or in the case of the facts alleged not, in the opinion of the Court, constituting a valid ground of challenge, to overrule the same and leave the challenging party to his remedy by bill of exceptions.

In Rex. *vs.* Dolby, 1 Car. and K. 238, the proceedings in the case of a challenge to the array, for that the person accused as he alleged, was prosecuted by an association called the Constitutional Association, and that one of the Sheriffs who returned the jury was one of the Association; the counsel for the prosecution took issue upon the allegation of facts in the challenge; the Judge appointed two triers to try the issue, who were accordingly sworn; the counsel for the challenge first addressed the triers and called and examined witnesses to prove the negative of the issue; the triers were then addressed by the challenging counsel in reply; the Judge summed up; the triers found the issue in favor of the challenge, and the cause was adjourned. This cause is reported at length, and will be found to be a good precedent to follow in similar cases.

In Rex. *vs.* Hughes, 1 Car. and K. 235, counsel for the prisoner challenged the array, for that the Sheriff had not chosen the panel indifferently and impartially, and that the panel was not an indifferent panel, without showing in what respect the Sheriff had acted without indifference and with partiality; and to this challenge the counsel for the prosecution demurred, as being too general, and the counsel for the prisoner joined in the demurrer.

Gurney, B. and Cresswell, J., after argument, allowed the demurrer, and the trial proceeded. I cite this case as being a good precedent in the case of a challenge and demurrer.

Both the cases last referred to are modern, and besides being good precedents in points of practice in the cases of issues in fact and law, are in other respects valuable in determining the question before me.

I will mention one other case, the decision in which, as it is cited in the text writers, might, without an examination of the report, mislead, and be in apparent conflict with the law and the practice of challenges, as I have stated them. I refer to Fairman *vs.* Ives, 1 Chit. 85. In this case a rule for a special jury having been obtained, a panel was struck in the usual course of business by the Sheriff.

In Hilary Term following, the plaintiff applied in person for a rule to show cause why the special jury panel so formed should not be set aside and a new panel struck, on the ground that the forty-eight persons named in the former were not persons entitled to the additions of Esquire. The affidavit upon which the motion was made stated that the deponent had, since the special jury was struck, inquired into the condition and circumstances of the persons named in the panel, and that out of the forty-eight therein described as Esquires, twenty-six were carrying on trades as retail shopkeepers, or were engaged in other occupations which rendered them, from their situation and habits of life, wholly unfit to sit as special jurors and try the subject of that action.

Abbott, C.J., in giving the judgment of the Court refusing the rule, said:—"There does not seem to me to be any ground laid before the Court upon this affidavit to justify us in granting this application.

"The usual practice in striking special juries is for the Sheriff to take the freeholders' book and select those persons against whose names the addition of Esquire is placed. The affidavit before the Court does not suggest that the persons chosen are not qualified to sit as special jurors, nor does it complain of any improper motive on the part of the Sheriff. All that is alleged is, that a certain number of the persons named in the panel are engaged in trade and therefore do not answer the description of Esquire. That suggestion is of itself no objection to the panel, because it is very well known that there are many persons engaged in trade who are perfectly competent, from their intelligence and education, to serve upon special juries, and to whom, from their property and substance, the denomination of Esquire is given by courtesy. But even supposing this were an objection, there is nothing in this affidavit which negatives the qualification of the persons excepted to. The Court must deal with the motion upon the grounds stated in the affidavit, and they cannot go out of it. For anything that appears at present to the Court, every one of the twenty-six persons mentioned may be possessed of sufficient freehold property, or may be otherwise qualified, so as to entitle them to assume the denomination of Esquire, and as no improper motive has been ascribed to the returning officer, it would be improper for the Court even to grant a rule to show cause, for the affidavit upon which the motion is made would be a sufficient reason for discharging the rule with costs. It is much better, therefore, to refuse the rule in the first instance upon the affidavit, which affords no ground for this application. *Per curiam.* Rule refused."

On the principles and practice of the law of challenge, as I have above briefly summarized them, I will now proceed to the examination and discussion of the issue in law raised by the demurrer to the challenge to the array of the grand jury by the counsel of the defendant.

The grand jury and petit jury are struck and returned by the Sheriff of Manitoba under the Manitoba Jury Act, 39 Victoria, chapter 3. This Statute purports to provide for grand and petit jurors, exemptions, disqualifications, jury lists, jurors' book, the panel, summoning the jury, challenges, talesmen, penalties upon the sheriff, jurors, clerks of the County Court and others for contravention of the provisions of the Act, and payments of jurors; in short it professes to be a complete jury code; and, in so far as I am able to judge, it has substantially accomplished its design.

Section 4 provides a board for the selection of jurors in each judicial district of the Province.

Sections 9, 10, 11, 12 point out and direct in what manner the jury lists are to be made and prepared by certain officers, in duplicate, from and out of the electoral lists of the respective electoral districts, and within a given time the same are to be deposited, one with the Clerk of the Crown and the Peace, and the other with the Sheriff of the Province. By sections 13 and 14 the Sheriff is directed to transcribe in a certain manner all the names as they shall appear on these lists into a book to be called the "Jurors' book," a duplicate of which he is ordered to deposit in the office of the Clerk of the Crown and Peace.

Section 17 provides for correcting the jurors' book, in case of error ascertained, death, removal, disqualification or otherwise.

Section 18 and sub-sections as amended by 40 Victoria, chapter 18, provides for the removal of the jury lists and jurors' book.

From the jurors' book thus made and prepared the panels of jurors are taken. By section 23 it is enacted:

"All grand and petit jurors summoned to serve at any Court shall be taken in turn by following uninterruptedly and successively the order of the list, beginning with the first name upon the jurors' book, when such jurors' book is newly made, and thereafter with the name following that of the last juror already summoned, and so on successively, until the number of the list has been entirely gone through, and then beginning again and going through in the same manner."

By section 24 it is enacted:

"The panel of grand jurors to be summoned in any term of the Court of Queen's Bench, shall be made from the grand jury list in the jurors' book by taking therefrom the names of twenty-four persons in turn following uninterruptedly and successively, until the number on the list has been entirely gone through and then beginning again and going through in like manner."

In addition to the citations I have already made, it will be sufficient for the purpose of the decision of this demurrer before me, to refer to section 35. This section requires the Sheriff upon the return in the Court of the *venire facias* to annex thereto the panel containing the names, together with the places of abode and additions of the persons named in such panel, under section 33.

From what has been said, I may shortly state the provisions of the Statute, in so far as they bear upon the question before me:

1. The selectors in the matter pointed out by the Act, select from the voters' lists, with the residence or domicile, addition and a short abbreviated description of the subject of qualification as voters, as they shall severally be found in the voters lists, the names of the jurors, and write them down as they are selected one after another, and certify to the same; and the names thus selected, together with the residence or domicile, addition and qualification, &c., written and certified, are the jury lists. It will be observed that the Statute makes the voters lists, as to names, residence, addition and description of the subject of qualification as they stand on the voters lists, right or wrong, accurate or inaccurate, perfect or imperfect, the basis of the jury lists. The Statute gives the selectors no discretionary power of correction, emendation or addition in names, residence or domicile, qualification or otherwise.

2. The Sheriff transcribes, that is, copies into the jurors' book, in the manner directed by the Statute, the names, residences and additions as they respectively stand and appear on the jury lists. In this respect he is limited to the jury lists by the Act, and he has no corrective, emendatory or discretionary power.

3. From the jurors' book, so made and formed as I have stated, the Statute requires the Sheriff, in manner mentioned in the 23rd and 24th sections, to take off and make up the jury panel, giving the name, residence and addition of each juror as they are entered and appear on the jurors' book, except as that book may have been corrected or amended under section 17.

The panel thus struck would appear to be the panel for the striking of which the Act was passed; and the persons named on this panel being duly summoned, and the panel being annexed to the *venire facias* and forming part thereof, being along with the *venire facias* in due form returned into Court, would seem to be free from

any legal objection; *prima facie*, it must be considered to be, in all its parts, according to law. If in any, at least material, matter, as to name, place of residence or addition, it differs from the voters' lists, or the jury lists, or the jurors' book, with all of which in these respects it must, according to the Statute, agree, it might be open to exception; but in these respects conforming to the voters' lists, the jury list and jurors' book, it could not be excepted against on account of inaccuracy or imperfection in name, place of residence or addition; to hold otherwise would be to fly in the very face of the Statute; in the wisdom and policy of which in this respect and in that of its general provisions I fully concur.

In the case under decision, the allegations in the challenge do not charge that the panel has not been struck, and the jurors named have not been summoned according to the Statute. It alleges that the Sheriff has returned the panel in which he has not set forth the name, surname, trade and calling and the place of residence or domicile of each juror as required by sec. 11, sub-sec. 2, a duty imposed upon the selectors, not upon the Sheriff; but it does not aver that these names, with the residence and addition, are not transcribed by the Sheriff in the panel precisely as they are contained in the voters' lists, in the jury lists and the jurors' book, which, as I have already said, being so transcribed, puts the panel in this respect at all events, as regards a challenge to the array, whatever clerical inaccuracies there may be, beyond exception.

I think on this ground alone the challenge must fail.

But it must be observed that a challenge to the array is an exception against all persons included in the panel in respect of the partiality or default of the Sheriff. (Co. Lit., 156*a*.) It is difficult to conceive how the challenge under consideration could, in any point of view, fall under the rule given by Co. Lit., within which, as it appears, at common law, all challenges to the array must be confined. There is not in language similar to that employed by Abbott, C.J., in Fairman *vs.* Ives, a suggestion that the persons chosen on the panel are not qualified to sit as grand jurors, nor is there any complaint or allegation of any improper motive or conduct on the part of the Sheriff. All that is alleged is that a certain number of the persons named in the panel are not set forth as to name, trade and calling, and place of residence or domicile, as required by the Statute relating exclusively to the selectors in the preparation of the jury lists, and in respect of which they are limited to the voters' lists by the Statute, and which has no reference to the Sheriff or to the panels.

That suggestion or allegation is of itself no objection to the whole panel or to any part of it; because it neither goes to the partiality or default of the Sheriff, nor indeed to the perfect competency and indifferency of the jurors in respect to whose names the inaccuracies are alleged. I find no authority for holding the want of the christian name in full, or contraction or inaccuracy in stating the name, residence or addition of the jurors, is a good ground of challenge to an individual juror at the polls, much less to the array, provided there be no question or doubt as to the identity of the juror and as to his freedom from objection in other respects. At common law, therefore, independently of the Statutes altogether, I think the challenge to the array, assuming it points to the object I have indicated, not sustainable. Indeed, I do not think it sustainable as a challenge to the polls.

For the reasons I have given, and for others which I might mention, I think the demurrer must be allowed. It is allowed accordingly.

The Prothonotary will at once proceed to swear the grand jury.

G.

POWER vs. CLARKE.

IN THE COUNTY COURT OF SELKIRK, MAY 20TH, 1880.

This cause came on for trial before me at the sittings of this Court at Winnipeg on the tenth day of February, 1880.

Mr. Wood appeared for the plaintiff, and Mr. Henry J. Clarke appeared in person.

Plaintiff's claim, as indorsed on writ of summons, is as follows:—

"The Plaintiff claims $100 according to the conditions of a certain bond, dated July 21st, 1879, made and executed by the defendants to the plaintiff."

The bond is the usual "Receipt Bond" given by one Isidore Dumas and Henry J. Clarke, for the forthcoming of one horse, cart and harness, seized and taken under an attachment issued out of the County Court of Selkirk at the suit of Napoleon Bonneau against the goods and chattels of Isidore Dumas, by the plaintiff, a constable, to whom the writ of attachment was directed, to satisfy a certain debt claimed by Bonneau to be due and owing to him by Isidore Dumas, provided Bonneau should recover judgment against Dumas for his alleged debt or demand.

The bond is executed by Isidore Dumas and Henry J. Clarke. The obligation is joint and several.

The case of Bonneau *vs.* Dumas, in which the writ of attachment was issued, came on for trial, October 29th, 1879, and resulted in a judgment for the plaintiff for

Debt or damages	$90 80
Costs	23 40
	$114 20

In the meantime Isidore Dumas had removed and taken with him all his goods and chattels into the North-West Territories, and located himself and family at some place near Fort Carlton where he now resides. He has made that place his permanent abode.

No goods and chattels were, therefore, forthcoming to satisfy the judgment obtained against Dumas at the suit of Bonneau. Bonneau demands of the constable, Power, the value of the horse, cart and harness seized under the attachment, and Power demands the same property from Henry J. Clarke, the co-obligor in the "receipt bond" along with Isidore Dumas. But Henry J. Clarke could not produce or deliver this property to Power, as Isidore Dumas had taken it away into the North-West Territories, and had it in his possession at Fort Carlton. Hence this action. Bonneau, instead of taking an assignment of the bond and sueing in his own name, as he might have done, sues in the name of the obligee in the bond, John Power, as he had a right to.

When this cause came on for trial in February last, and it appearing that Isidore Dumas had not been served and was out of the jurisdiction of the Court, and that the bond was several as well as joint, and the Plaintiff consenting thereto, I ordered that the name of Isidore Dumas, one of the defendants named in the writ of summons in this cause, should be struck out and that the action should proceed against Henry J. Clarke alone, and the name of Dumas was accordingly struck out.

The bond sued on is produced and its execution by the defendant admitted.

The plaintiff produces no evidence of the value of the horse, cart and harness, mentioned in the condition of the bond.

The defendant, Mr. Clarke, alleges that, since the giving of the bond, the horse has died—that the old cart is somewhere in the parish of St. Norbert, and that the old harness, as he supposes, is along with it.

I adjourn the case to Chambers, to give plaintiff the opportunity of giving evidence of the value of the horse, cart and harness; of the hearing of which at Chambers, the defendant is to have notice.

On the 20th February, on notice to the defendant, the plaintiff proceeds with the further hearing of the case. Mr. Wood for the plaintiff, and the defendant attended in person.

Cyrille Parisien, sworn for plaintiff, says:—

"I know Isidore Dumas. I recollect when his horse, cart and harness, were seized up at Baie St. Paul, last summer. Dumas was there on his way from St. Norbert to Fort Carlton with all his personal property, and with his family, John

Power, the plaintiff, seized the goods under attachment, at the suit of Napoleon Bonneau. I know the horse and cart well. After the plaintiff had seized the horse, cart and harness, he hired me to bring them back to Winnipeg. I brought them back to the door of the Clerk's office, at the Court House here. The horse was a gelding. The horse was well worth $65, as a cart horse. The cart was worth $15. It was a good cart. The harness was worth $3.50. I only saw the horse for the first time at Baie St. Paul, and only knew it while driving it down to Winnipeg. There was a blanket in the cart—two blankets and a sort of quilt, worth $2 each."

Cross-examined by the defendant:—"They were white blankets. They were new. I think he had bought them just before starting. The cart was also new. I never heard that the horse died. I live at St. Norbert. I do not know that Dumas has been back since he went away. I have not seen the cart since. I do not know that it is in St. Norbert now."

Adjourned to to-morrow for further evidence.

FEBRUARY 21st, 1880.

Mr. Wood present for the plaintiff. The defendant, though notified, does not appear.

JOHN POWER, sworn for the plaintiff, says:—

"I am the nominal plaintiff in this cause. Napoleon Bonneau is the real beneficial plaintiff. I acted as bailiff in Bonneau *vs.* Dumas, and under an attachment issued, directed to me, in the Bonneau *vs.* Dumas, I seized a horse, cart and harness, at Baie St. Paul, as Dumas was on his way to the North-West, and brought them back to Winnipeg to the Clerk's office, where they were released to Dumas, on the 'Receipt Bond,' sued on in this cause, being made by Dumas and the defendant, Henry J. Clarke. When I seized the goods they were being taken to the North-West Territories, and after their release, Dumas immediately resumed his journey to the North-West Territories, and went, as I understood, to near Fort Carlton, where, as I understand, he has ever since been. I have never seen him or the horse, cart and harness since. Bonneau obtained a judgment against Dumas, in the suit of Bonneau *vs.* Dumas, in which the writ of attachment was issued, under which the horse, cart and harness were seized. That judgment was for $114.20 debt and costs. I am a good judge of the value of horses in this country. That horse was worth about $60. The cart was worth $15. The harness was worth about $3."

I further adjourn the case, to permit the defendant to offer any evidence he may see fit.

The case stands to the 10th of April, 1880, when the defendant desired to give evidence in answer to the case made by the plaintiff. I permit him to do so, although no notice had been given to the plaintiff.

APRIL 10TH, 1880.

PIERRE DUMAS, sworn for the defendant, says:—

"I know Isidore Dumas. I am his brother. He wintered last winter at Fort Carlton. He formerly lived on Rat River. He sold his place at Rat River and went up to Fort Carlton to live and reside. He went up there last summer. It is not a year yet since he went away. He owns no place or property down here now. He took his family away with him and has them with him now. He went away last spring. He went away with Baptiste Parenteau and had, when he set out, a horse and cart. I know the horse. He had not owned the horse over two weeks before he started for Fort Carlton. He got the horse from Parenteau. I would not give over $25 for him. I never used the horse. He was a gelding. I cannot say how old he was. I think he was a young horse—four or five years old. He was what is called a 'Red River' horse. He was lame in one of his fore legs. When Parenteau bought the horse from some one back of the slaughter house in Winnipeg he was lame; and he was lame when Parenteau sold him to my brother, Isidore Dumas

The lameness was in the foot. I think it was a sprain in the foot, and sore there. Parenteau gave another horse and took in payment or exchange this horse and some money—from $25 to $30. The horse Parenteau gave for this horse and the money he got 'to boot' was worth from $55 to $60. The horse in question was an 'Indian horse.' My brother, Isidore, gave an ox for the horse. He got the ox from Parenteau to go away with. He got the horse from the Parenteau who was going west with him. This was all Isidore gave for the horse. I was present when the bargain was made. The horse, if not dead, is west at or near Fort Carlton. The cart was an old 'Red River' cart. I sold it to my brother Isidore for $8, and I gave him back $1 of the $8. I do not think it has ever been brought back here. I never heard that the horse died between here and the Portage, or that it is not now living. I do not know the harness. Such a harness would be worth about $4. I do not know that my brother will be back here in June. Since he went away, I have received no information from him. He does not intend, as I know of, to come back here to reside. I understand he has permanently taken up his residence in the North-West."

The defendant desires a further adjournment to the 16th April, 1880.

On the 16th April the defendant and the counsel for the plaintiff appeared, and the defendant asked for a further adjournment to enable him to procure further evidence. The counsel for the plaintiff opposed this motion on the ground that the defendant had already had great indulgence in this direction; and further to extend it would be a denial of justice to the plaintiff.

I felt the force of this objection; but for fear that the defendant might in any manner be prejudiced by not giving him the most ample time to look up and produce any witnesses he might think material to his defence, I am disposed to make another adjournment, but with the distinct understanding that it shall be the last. I asked the defendant what time he wanted. He answered that he could not state what time he might require. I then adjourned the final hearing of the cause to the 20th May, and informed the defendant that on that day he must be present, as I should on that day dispose of the case.

The case was accordingly further adjourned to the 20th May.

On this the 20th of May, counsel for the plaintiff appears but the defendant appears not.

The counsel for the plaintiff asks for judgment. I proceed to give it.

Napoleon Bonneau is a French Canadian of considerable intelligence and of fair character. For some two or three years last past he has been engaged to a considerable extent in purchasing and selling and assisting others to purchase and sell, half-breed claims and half-breed land scrip.

Isidore Dumas is a half-breed of a family, and as such entitled to land scrip for $160. He was brought up and resided in the Red River settlement in the parish of St. Norbert. He is of the average intelligence of the average half-breed, and possesses all that simplicity and all that confiding nature so characteristic of the French half-breed, and all that yielding disposition to importunity which deprives the half-breed of the power of exercising the freedom of the will in obedience to the affirmations of the intelligence and judgment for which the average half-breed is eminently distinguished.

Henry J. Clarke was Attorney General under Lieutenant-Governor Archibald and Morris, and passes for a person of shrewdness and intelligence. He is a lawyer by profession.

In the spring of 1878, Bonneau purchased from Dumas the half-breed scrip of the latter and gave in payment a mare which Bonneau and others valued at $80. At that time half-breed scrip was being bought and sold at from $40 to $60, generally about $50. Bonneau and other witnesses swear that Dumas accepted the mare in full payment of the purchase money of the scrip; but Dumas contends that he was to have in addition to the mare $25 more when the scrip came. The scrip came in the spring of 1879. Dumas drew it from the land office and went with it to Bonneau, and offered to deliver it to him if he would give him $25. Bonneau refused to give the $25, claiming the scrip as his, and that he had already paid for it in full. Dumas

refused to deliver the scrip without getting the $25 and took it away with him. Dumas met Mr. Harkness, a person of considerable intelligence, to whom he narrated the difficulty with Bonneau about the scrip and asked him what he thought he ought to do under the circumstances. Mr. Harkness was then desirous of buying scrip, and if it would be right he felt disposed to buy this scrip from Dumas. This conversation took place at Mr. Bannatyne's store. Harkness says he took Dumas over to a lawyer, Mr. Henry J. Clarke, to see if he would be safe in buying the scrip. Dumas stated what he alleged to be the facts of the sale of the scrip to Bonneau as already mentioned. Mr. Clarke told him he could sell the scrip and put the money he had received from Bonneau in the bank for Bonneau and keep the rest himself, if his statement was correct. Mr. Clarke then said: "I will buy the scrip from you and give you the $25 and I will settle with Bonneau for the rest. If Bonneau bothers you send him to me and I will settle him. I will be responsible to him." Mr. Clarke bought the scrip on these terms. He gave Dumas the $25, but has not settled with Bonneau. For aught that it appears he got possession and has converted to his own use the scrip of Bonneau's, having only paid away therefor $25, under the circumstances I have mentioned.

Bonneau then sued Dumas for the price of the mare which he gave in payment of the scrip. Hence the action of Bonneau *vs.* Dumas, in which the attachment was issued under which the horse, cart and harness of Dumas were seized; and hence probably the intervention of Mr. Clarke as surety in the "receipt bond," and the judgment against Dumas in Bonneau *vs.* Dumas of $114.20.

The facts in respect of the case of Bonneau vs. Dumas leading directly to the present action are drawn from the papers, proceedings and evidence on file in this Court in Bonneau *vs.* Dumas. These facts, though not evidence in the present case, and not referred to for the purpose of aiding in the decision of the present case, relieve me from the almost general dissatisfaction I always feel when I am compelled to hold that one person without consideration must answer the debt or miscarriage of another, and obligations too often induced by sympathy and generosity.

In looking at the whole evidence as to the value of the goods and chattels seized and mentioned in the "receipt bond," notwithstanding the evidence of Pierre Dumas, the brother of Isidore Dumas, I am disposed to think that the horse was worth $60, the cart $12.50 and the harness $3.50, making in all $78.

I think I am quite safe in this estimate. If the defendant had any evidence to offer which would reduce these values, he certainly has had sufficient time and opportunity to produce it; and failing to adduce it, I must decide on the evidence before me.

Judgment for the plaintiff for $78.

H.

IN EQUITY—DAHLL v. CLARKE.

In the Queen's Bench.

This suit is brought by Elizabeth Dahll and her children and grand-children, the widow and children and grand-children of the late Alexander Dahll, against Henry J. Clarke, to have an alleged will of Alexander Dahll deceased, purporting to be executed on the 3rd day of December, 1879, declared void, and to compel defendant to account for transactions affecting the property and state of the late Alexander Dahll, had with Dahll in his lifetime.

Dahll, deceased, was a farmer, residing in the Parish of St. Paul, where he died on or about the 8th of December, 1879.

The defendant is an attorney and solicitor residing in Winnipeg.

The bill sets forth that Dahll, for a long time prior to his death, had not the possession of his ordinary judgment and senses, and through periodic, excessive intemperance, and indulgence in strong drink, was, at times, in a state of insanity, and was incapable of managing and transacting business in a rational manner; and shortly prior to his death, he had indulged to great excess in strong drink, and, as a consequence, was greatly disturbed and disordered in mind and body; and while laboring under the consequent insanity took a large quantity of strychnine, by the effects of which, taken in connection with his frequently disordered and shattered system, resulted in his death five days after he had taken the same. While Dahll was in the state he was after he had taken the strychnine, he was visited by the defendant, who pretends that he had received from Dahll instructions to prepare his will; and defendant prepared what he now pretends is the last will and testament of Dahll, deceased; and shortly before the death of Dahll, he pretends that the will that he had caused to be prepared in Winnipeg, was brought to the house of Dahll in the Parish of St. Paul and was executed by Dahll as and for his last will and testament. But the plaintiff's charge that Dahll, at the time that the alleged instructions for the preparation of his will was given, and at the time that he is alleged to have executed the will, was not in a sound and disposing state of mind, and that the said pretended will is not the will of Dahll, deceased; and that the contents of the said pretended will strongly corroborate the charge which the plaintiffs make.

The bill further sets out that Dahll died seized and possessed of considerable real and personal property—the absolute control and disposition of all which are by the terms of the pretended will, as the plaintiffs are informed, vested in the defendant alone, at his absolute discretion, he being the sole executor and devisee under the pretended will.

The bill then alleges that in the lifetime of Dahll, Dahll, through the defendant as his solicitor, sold and disposed of certain lands for $5,250, or thereabouts, to one Oliver; and the plaintiffs are informed and believe that a small portion of the purchase money was paid to the defendant, who, in so far as the plaintiffs know has not accounted for the same; and the residue of the purchase money with interest was secured by mortgage which the defendant, shortly before the death of Dahll, and while he was in the state that he has been described, came to the house of Dahll, and under pretence that he would collect the interest thereon in arrear and pay over the same, obtained the said mortgage and now has the same, but has never paid any interest thereon except $10 given to the plaintiff, Elizabeth Dahll, the widow of Dahll, deceased.

The bill prays that the said pretended will may be declared void and of no effect.

That the defendant may be ordered to account for his dealings and transactions with the estate of Dahll, deceased, prior to his decease and subsequent thereto, and may be ordered to deliver up all papers in his possession or under his power or control in any way relating to the property, estate and effects of Dahll deceased, and that the defendant may be ordered to pay the costs of this suit.

The defendant, in his answer, says that he was not aware of the habits of Dahll, deceased, in respect of excessive use of stimulants, nor was he aware when he saw him on the 1st December that he had been indulging immoderately in drink, and was incapable of attending to business. He admits that he took instructions to prepare a will for Dahll and had one prepared, which was executed by him, through his procurement, but that it is not such as were his instructions. He denies that he ever intended to act on that will, and declares that he filed in the Probate Office a renunciation. He admits that he acted as the solicitor of Dahll in selling certain lands and property, but denies that they were sold for the sum alleged in the bill, or that the mortgage is for the sum stated, and he alleges that he obtained the mortgage shortly before the death of Dahll, not to collect the interest but to sell it and invest the money for the benefit of Mrs. Dahll. He claims that Dahll is indebted to him and not he to Dahll, and prays to be hence dismissed with his costs, or that a decree may be made ordering him to be paid what shall be found due to him.

This cause came on for hearing by the way of taking evidence on motion for decree on the 20th April last.

As in this cause considerable property is involved, and as the character of a Solicitor of this Court, by the charges in the bill, is somewhat compromised, I think in justice to him, if for no other reason, I should undergo the labor of transcribing all the evidence.

ELIZABETH DAHLL, sworn for the plaintiff, says: —

"I am the wife of the late Alexander Dahll, deceased, who died about the 8th of December last. He resided in St. Paul Parish. He was not long ill. He had been drinking hard. While he was drinking, I came up to Winnipeg with him and we saw the defendant, who is a practicing attorney. He wanted money from him which he had belonging to my husband, from the sale by him of a house, farm and other things of my husband out at Victoria, which were bought by Mr. Oliver, for which Oliver gave $5,250—$5,000 for farm and house and $250 for wood. Certain chattels were sold which I think were to be paid for in two years, consisting of 3 carts, 4 ploughs, 1 reaper and mower, 3 cows, 2 brindle oxen, 1 white ox and 1 red ox, and other property mentioned in the bill of sale from Alexander Dahll to Jessie Starke, wife of R. W. Oliver, dated 20th August, 1879, filed in the County of Lisgar 21st August, 1879. The conveyances were to Jessie Starke, wife of R. W. Oliver, although R. W. Oliver was the purchaser. $1,000 was to be paid down; the rest, I thought, was to be secured by mortgage. Whatever was got was given over by Dahll to the defendant. This was about August, 1879. My husband never got this money from the defendant as far as I know. When we came up and saw the defendant, about the first of December, it was for the purpose of getting the money the defendant, through the sale to Oliver, had received, belonging to my husband. We asked him for the money. He said it was too late that day, as the bank was closed, but said he would bring down the money next day. The defendant asked my husband had he made a will yet? Yes, he answered, he had his will made. He then asked, who were the executors? and my husband said, Mr. Higgins and Mr. MacArthur. The defendant then said: 'Would it not be better to leave out Mr. Higgins? He has cheated you already, and when your wife is left alone, he will do so to her.' We returned home. The defendant came down next day and asked me how was my husband. I said, he is very ill, and he then went into the room and saw my husband, who was in bed very ill, and as he saw him he said: 'Sometimes I get into that fix myself, and I then feel almost disposed to take poison.' The defendant then asked: 'Have you any money in the Montreal Bank?' My husband made no answer. I then came out of the room and the defendant came out along with me, and he said: 'I do not think Dahll will last long.' He then said to me: 'Give me the Oliver mortgage and I will make all the papers in your name and nothing can be touched.' On this I went and got and gave him the mortgage. He took it away, and said he would return next day with it and a proper paper writing. He did not come next day, but his brother, Frank J. Clarke, and his nephew Abjon, came in his stead. They said they were sent down by the defendant, and they had a proper writing in the room, which my husband was to sign. I thought it was something for my husband to sign to hand over the mortgage to me. I went out, but came in, and my husband had to be held up to sign the paper. I assisted in holding him up. I do not know that any paper was read. My husband at that time was altogether incapable of exercising a sound and disposing state of mind. He was almost dead. He certainly did not know that he was signing what purported to be his will; nor did I suppose anything of the kind. I was lulled into the belief that some paper was being signed to hand over the mortgage to me—so the defendant had promised. Frank J. Clarke and Abjon went away, taking the paper along with them. I supposed this was all right as it would, with the mortgage, be handed to me by the defendant. Shortly after that my husband died. He continued out of the exercise of his judgment and intellect till his death. After his death I came with Mr. Pritchard to town to see the defendant to get the mortgage and paper-writing

he had promised me. I asked him for the papers he had promised to send down. He said he had not the papers ready, and he then said he would come down and would bring the papers, and would send a note to Mr. Pritchard of his coming, so that he might be present. I said I came up to get some money, and he then put his hand in his pocket and gave me $10. He said he would be down in two or three days' time. He never came. He never said anything about a will, or preparing or drawing a will, except as I have stated. I have never seen him since.

CHARLOTTE DEVELIN, sworn for the plaintiffs, says:—

"I have heard the evidence given by my mother; I know the facts and circumstances of the case, and I say they are substantially correct. I was at my father's house from the 4th to the 8th of December, the day of the death of my father. During all the time I was there, he was unfit to transact any business. During all that time he was not possessed of reason or judgment, nor was he of a sound and disposing state of mind. The alleged will was signed on Wednesday."

FRANK J. CLARKE, sworn for the plaintiffs, says:—

"I am brother to the defendant. I know the widow of the late Mr. Dahll. I look at what purports to be the will of Mr. Dahll, of St. Paul, who died about the 8th December last. It is dated the 3rd day of December last. It is my handwriting. I copied it from a draft made by defendant, by his direction. The same afternoon, the defendant left the town for Rockwood. The defendant told me to copy the draft he had prepared and then to take it, and take a witness along with me, for fear none were there, and go down to St. Paul, to Dahll's house, and have him execute it. On the same afternoon, the 3rd of December last, I went to Dahll's house and took with me Mr. Abjon, my nephew, then in and about our law office, and got the will executed. Dahll was in bed and appeared to be very ill. I spoke to his wife in the first place, when I went in, and enquired how he was. She said he had passed a bad night, but was then much easier. Mrs. Dahll asked me if I had the will. I said yes. We then went into the room where Dahll was in bed, and seemed to be, ever and anon, in great pain. He was, as I understood, inhaling chloroform from a handkerchief. He asked me about the will. I told him I had it. He asked for the defendant. I told him the defendant was out of town. He asked me to read the will to him. I did so. I filled in the name of his wife and also the names of their children. These were the youngest. He said the rest of the children could take care of themselves. To this the wife assented. Dahll then signed the will. He was raised to a sitting position and the wife assisted in doing this. I and Abjon and a servant girl witnessed the execution. I then left and brought the will away with me, and showed it to my brother, the defendant, when he returned, but this was after Dahll's death. I made up the papers for probate of the will. I did this at the instance of Mrs. Dahll, who called at our office with Mrs. Develin, and expressed herself anxious the will should be proved. She communicated with me and professed to be indignant that my brother, the defendant, had not attended to her business or affairs. After this the widow called with the Reverend Mr. Pritchard, and had a conversation with the defendant. I was not present. I think Mrs. Dahll was at the office more than once. I made up the papers for probate of the will. When I applied for probate, I found a *caveat* had been filed, and the application was refused. I think this was on the 5th January. Afterwards, a day or so, the defendant executed and filed in the Probate Office a renunciation of executorship under the will."

ROBERT BUCHANAN FERGUSON, sworn for the plaintiffs, says:—

"I am a doctor of medicine, and reside in Winnipeg; am practicing my profession—duly licensed to practice. I attended the late Alexander Dahll in his last illness in December last. Was called their professionally. This was about one o'clock in the morning of said December 2nd or 3rd, at St. Paul's parish, at his house. I found him suffering from a dose of strychnine he had taken. I prescribed for him and remained with him for about ten or twelve hours. I then left and returned in the evening

about five. I found two persons there who, I have since learned, were Frank J. Clarke and one Abjon. I afterwards understood that they were getting some documents signed. The family, apparently, knew nothing about a will. They left before I did. I consider, from the time I saw him in the morning until I saw Clarke and Abjon go away, he was not in a sound and disposing state of mind. I learned from Mrs. Dahll that Dahll had been indulging in excessive drink, and in a paroxysm had taken a large dose of strychnine which he had in the house, and was in paroxysms when I went to him in the morning. I gave him hydrate of chloral and chloroform, and left that medicine for him when I went away, with directions how it was to be given. On my return in the evening, I learned that it had been administered rather freely, and I found him in the evening incapable of continuous thought or reflection, and quite incapable of doing any business. In the state he must have been in from the time I left until I returned, I consider he was incapable of doing any business. Spasms would recur from the effects of the strychnine, and his agony would be terrible. From the time I saw him first until the day of his death, which took place on the 8th of December, 1879, he was not in a fit state to make a will or do any business."

No other evidence was offered for the plaintiffs.

The defendant gives no evidence at all, although the hearing has been postponed several times to enable him to do so.

Mr. Biggs asks for a decree setting aside the will.

Mr. Howell, counsel for the defendant, submits that no decree can be made against the defendant for an account, as no representative is before the Court to whom he is liable in law to account.

The first question I have to consider, is the validity of the will referred to in the pleadings.

It is needless for me to say, that under the evidence, the alleged will of Alexander Dahll cannot be sustained.

From the evidence I am compelled to go much farther. It was the result of fraud and deception. On the first of December, Dahll and his wife, late in the afternoon, met or had an interview with the defendant, at his hotel, in Winnipeg. I say late in the afternoon, because Mrs. Dahll says, the visit of herself and husband was for the purpose of obtaining from the defendant the money he had received from the sale to Oliver of the farm and property at Victoria—about $1,000—and that defendant offered as an excuse for not giving it to them, that it was past bank hours; but that he would draw the money next day and bring it down to their house, at St. Paul, where they resided. She swears that she was with her husband during all that interview, and not one word was said to the defendant about preparing a will; on the contrary, they both told the defendant, that Dahll had already made his will and that Higgins and MacArthur were the executors.

It appears the defendant went down next day, which would be the second day of December, but brought down no money to them, but inquired of Dahll if he had any money in the Bank of Montreal, to which inquiry he got no answer, but he managed to obtain, from Mrs. Dahll, the Oliver mortgage; if on the terms and for the purpose Mrs. Dahll says he got it, or if on the terms and for the purpose he alleges he got it, under the circumstances in which the Dahll family were then placed, a transaction alike discreditable and unprofessional. What surprises one is to find, among the exhibits filed by the defendant, a power of attorney from Dahll to the defendant executed on the 2nd December.

Notwithstanding what the defendant states in his answer, he drafted the will, gave it to his brother, Frank J. Clarke, to engross, and directed him to go, with a witness, down to Dahll's house and get it executed, and after it was executed and brought back to his office, he saw it and no doubt gave directions to have it proved and to obtain probate of it, and would have succeeded in this had not a *caveat* been filed on the morning of the day application was made for probate.

From the medical and other evidence, it is clear that Dahll, when he signed and executed the alleged will, was not in a sound and disposing state of mind—that he

was incapable of doing any act, which in this respect would bind him—and that the least that can be said of the whole transaction, is, that it has all the surroundings and characteristics of an attempted imposition and fraud; and the internal evidence of the document itself supports this conclusion.

It appears from an examination of Dahll's pretended signature to the instrument, that he was unable to write his name legibly and that another person finally wrote his name to the instrument, when or at what time, and whether or not at the request of Dahll, does not appear from any note to the document nor from any evidence before me.

From every point in which the alleged will can be regarded it is clearly void.

Viewing the transactions of the defendant with Dahll in his life time in the light of the *viva voce* evidence, and the suspicion thereby thrown over all the documentary evidence produced, I am not satisfied with the account the defendant gives of those transactions, or of the result at which he arrives. That result may be correct, but if it is, one cannot understand the conduct of Dahll, in his lifetime, on the sworn evidence of Mrs. Dahll. These transactions, one would think, are susceptible of being statisfactorily tested by cheques, bank deposits, and so forth, and by reference to what was done with the money.

The conduct of the defendant in respect of so important a document to the family as a will is calculated to shake confidence in his other transactions with the family, and would impose upon the Court, under a proper case, the duty of having them satisfactorily cleared up.

But I do not see how that can be done in this suit. The plaintiffs, as the widow and children of Dahll, deceased, are not clothed with the power of legally demanding an account by administration or otherwise. After being clothed with legal authority they may demand an account.

The decree will, therefore, declare that the alleged will, having been procured by the defendant through fraud, and executed by Dahll, if indeed Dahll executed it at all, while he was not in a state to make a will, is void and of no effect.

The defendant must pay the costs of this suit.

CHAPTER IV.

Observations on fourth paragraph of Mr. Clarke's Petition.

"That the said Hon. E. B. Wood is in the constant habit of introducing local and Dominion politics into his charges to grand jurors, and of taking an active part in politics, local and Dominion, and did so more conspicuously than usual during the last local election at Winnipeg, when in a barber's shop, in the presence of a number of people, the said Hon. Chief Justice E. B. Wood made a most violent attack on the character of one of the candidates then seeking election."

I am charged with being in the constant habit of introducing "Local and Dominion politics into my charges to the grand jurors' &c." I quite agree with the proposition that it is advisable for a judge to keep himself aloof from political parties; at the same time, I do not think the rule, or the reason of the rule, goes so far as to make it improper for a judge to express his opinion in conversation on politicians and on passing political events. I have in no way, shape, or manner, since I have held the office of Chief Justice of Manitoba, been connected with, or mixed myself with, or been joined to any political or other party, either Local or Dominion, either in charges to the grand jurors or in any way otherwise.

Now, did this issue, which is joined, depend for its determination on Mr. Clarke's affirmation and my denial, according to the legal rule (unless Mr. Clarke has a character for veracity superior to mine) the issue must be found against him. But, wherever in his petition he ventures on a statement which is susceptible of being tested by facts, there is no difficulty. I call as unimpeachable witnesses, my several charges

to the grand jurors for the seven years I have been in Manitoba. They are clipped from the current newspapers of the day. They are subjoined.

But before introducing those addresses to grand jurors, I must really ask to apologize for producing a letter to me from Mr. George L. Firestine, disproving the latter part of the allegation in this paragraph, and explaining how, and on what material, this senseless story "of politics in a barber's shop, and of violently attacking one of the candidates" was manufactured by Mr. Clarke. Of course, I attach no importance to the story itself, nor do I suppose His Excellency in Council will; yet still it is important, in this connection, as showing upon what kind of information, and from what kind of source his several charges in his petition are founded.

Mr. Firestine is a highly respectable and a perfectly reliable man; and shortly after the appearance of Mr. Clarke's petition in the newspapers, he sent me the following letter. It speaks for itself.

"April 3rd, 1881.

"DEAR SIR,—I notice in a petition against you as Chief Justice of Manitoba, got up by one Henry J. Clarke, published in the city newspapers, a paragraph to the effect 'that you are in the constant habit of introducing politics in your charges to the grand jurors, and of taking an active part in politics, local and Dominion—and that you did so more conspicuously than usual during the last Local election at Winnipeg, when in a barber's shop, in the presence of a number of people, you made a most violent attack on the character of one of the candidates, when seeking election.'

"I suppose your addresses to the grand jurors which all appear in the newspapers, will speak for themselves; in them I am not concerned; but I am concerned in the allegation of your 'taking an active part in politics, and of your making a violent attack, at the last local election at Winnipeg in a barber's shop upon one of the candidates'; because it was in my barber's shop, and in my presence, that the occurrence is said to have taken place. The whole story is a most malicious and wilful fabrication. There is not one word of truth in the whole matter. I recollect most distinctly the time referred to; and I am now able to bring to my remembrance all that occurred in which you were said to be implicated, from the fact that, since the appearance of the paragraph in the newspapers, it has been much talked of. This is all that occurred, when you were present. You came into the shop in the afternoon and took your seat on the tonsorial chair. I shaved you. While I was shaving you a person by the name of Montgomery was talking rather energetically about the election coming on in Winnipeg, the canvass for which was then progressing. You said nothing. After you had been shaved, and as you were getting out of the chair, Montgomery was just closing a highly colored panegyric on Mr. Woodworth, one of the candidates, by saying he was the greatest historian, the greatest orator and the greatest lawyer in the country. You laughingly remarked 'he may be a great historian, a great orator, but the Manitoba Law Society say that he is not a great lawyer' and you passed out of the door without saying another word. Your remark seemed to take Montgomery down. He looked a little chop-fallen."

"Since this false story has appeared, I have had frequent conversations with those who were then in the shop and heard all that passed, and with Montgomery also, and they substantially agree with me in the statement I have made. The query is how did Mr. Clarke get hold of this matter and weave a tissue of falsehoods out of nothing? From enquiry from Montgomery I learn that he on that evening met Clarke, Tuttle and Woodworth, and they had some oysters together; and in talking over political matters, Montgomery mentioned the incident in my shop, and said he did not know, but he thought the Chief Justice was not a supporter of Mr. Woodworth—that then, Mr. Clarke then took out a memorandum book and made some notes in it, and said 'There was another item. He would shortly attend to the Chief Justice.' Montgomery says he explained to Mr. Clarke that there was nothing in what you said; but Clarke said he understood it—he would attend to the matter. Hence the story he has fabricated.

"I may add that I have been upwards of five years in Winnipeg and that you could not intermeddle in politics or with political parties without my hearing or knowing of it, and I have not known, nor have I heard anything of the kind, and I pronounce the whole thing a deliberate falsehood."

Yours truly, &c., GEO. L. FIRESTINE."

"Hon. E. B. WOOD, Chief Justice.

I add an extract from a letter to me from Mr. Woodworth relating to this subject, which I received after I had prepared my answer to this paragraph.

"WINNIPEG, August 13th, 1881.

"MY DEAR SIR,—I have been absent from the Province for the last eight weeks, and consequently did not receive your letter of the 16th June last past until to-day, or most certainly my answer would have been at once most cheerfully given."

"I did take the trouble to enquire whether, during the last election for member for the City of Winnipeg, when I was a candidate, the Chief Justice of this Province in a barber's shop in the city of Winnipeg, or elsewhere, made an attack on my character, either direct or implied, and I am informed, by those most competent to know and judge, that such a charge is wholly without foundation and entirely baseless."

"I am dear Sir, your most obedient Servant, D. B. WOODWORTH.

"Hon. E. B. WOOD, Chief Justice."

I now subjoin the several addresses to grand jurors. They consist of October, 1874, February, 1875, June, 1875, October, 1875, June, 1876, March, 1877, October, 1877, March, 1879, October, 1879, and March, 1880. These constitute all the Assizes that I have opened and held since I have been in this Province.

October, 1874. *The Charge.*

The grand jury having retired and selected Mr. Robert Morgan as foreman, and they having been sworn in, His Lordship the Chief Justice said:—

Mr. Foreman and gentlemen of the grand jury—This is the first time that I have had the pleasure of charging a grand jury in the Province of Manitoba. It gives me great pleasure to see that so many have responded and answered to their names. In some Provinces and in England it might be considered somewhat of a hardship if so many persons were taken from the body of the people for the administration of justice, but in your country you are to be paid $2.00 a day, being $1 more than what is paid in Ontario or Quebec or the other Provinces, so that at any rate you are paid for your time while engaged in the administration of justice. It has been very much questioned whether a grand jury or any jury is essential to the administration of justice or not, but recently the feeling in England and elsewhere is decidedly in favor of retaining this ancient plank in the bulwark of liberty and justice. The best minds in the country named had exhausted every effort in discussing this question, with the result mentioned. The benefit which flows to the country from the grand jury and the jury system are incalculable. Juries are not supposed to try a case. They are to say whether the offence charged was committed and whether the person charged is the person or not. When a crime is committed it is an offence against the Crown, and the Crown is not a mountain, but society itself, and society makes laws for the good government and protection of all. The grand jury does not necessarily wait until it is called upon to act, it may examine and make presentments, and one of the most important duties it is supposed to perform is the examinations of prisons and penitentiaries. Recently at eleven o'clock at night two prisoners charged with grave offences had broken out of jail and were now at large. This was a matter that required the most searching investigation, and the grand jury must make an investigation of all the facts and circumstances connected with the same. His Lordship then spoke elequently of the duties of the jurors, and closed his remarks by a brief explanatory allusion to the different cases which would come before the grand jury for their consideration.

February 1875. *Charge to Grand Jury.*

The Chief Justice said:—

Gentlemen of the grand jury—The constitution of grand jurors runs back to a remote period in the history of English criminal jurisprudence. In great struggles between the Crown and the people, the nobles and the commons, the strong and the weak, the powerful and the impotent, for personal liberty and popular rights, grand juries have acted no inconsiderable part in the history of our country and nation. We can trace its existence in a crude state to the laws of King Ethelred. In the subsequent development of the Anglo Saxon commonwealth into a British Empire with its vast, widely separated, and distant possessions all over the Globe, in all British communities and populations, as well as in those who sprang directly from them, we find substantially the same grand jury organization, composed of the most substantial, intelligent and important gentlemen of the country, who form a shield and defence for the innocent, and an inquisitorial tribunal into all misdemeanors and felonies committed or suspected to have been committed within the body of the territorial limits over which their jurisdiction extends, and the state, condition and management of all prisons, asylums penal and other like public institutions within the same limits.

The duty of a grand jury is therefore very important in a free country. With them, must originate, in the Court of Oyer and Terminer, the prosecution of all offences; and to them belongs an inquisitorial visitation and investigation into the state, condition and management of all those institutions in the nature of prisons, asylums, penitentiaries and reformatories sustained or aided at the public expense. They have the right, also, to take into consideration the general state of the country, its moral and educational condition in its relation to law and order, and the prevention of crime, as well as such measures and policy as in their judgment would promote the material prosperity and the moral and intellectual advancement and welfare of the whole people—for all these matters are closely connected with transgressions of the law; but the inquiries should be so conducted, and the results so reported, as not to invade the constitutional rights and privileges of any class, or the political tenets or dogmas of any party.

Five years have passed away since Manitoba became a Province with an organized Government. At the beginning of its career it had many difficulties to contend with. Previous disorder and lawlessness had unsettled men's minds, and had arrayed race against race, section against section, and in many instances, neighbor against neighbor; and the knowledge of the unsettled state of affairs, and the apprehension of fancied or real danger to the security of life and property had a depressing effect, and greatly retarded a flow of immigration into this country, especially of a class of incoming settlers bringing with them wealth and a character calculated to raise the standard of education and morals, and to teach by precept and example the graces and amenities of a more advanced civilization. To add to these embarrassments, the inhabitants of Red River have been terribly afflicted with annual visitations of grasshoppers, which in their destructive course devoured almost every green thing in the land, and blasted the hopes and saddened the heart of the husbandman, and forced the people to a large extent to have recourse to importation for all the common articles of domestic consumption for themselves and grain for their cattle.

As to the unsatisfactory state of the country, and the excusable irritation growing out of the troubles of 1869-70, aggravated by the manner in which they were dealt with both by the Government of Canada at Ottawa, and by the Government of Manitoba at Winnipeg, I think I may venture to say that the feeling of irritation and the sense of wrong done have been softened by time, and are fast fading away; and although it may be difficult to erase the past from memory, yet the great law of love, always, did we but believe it, in harmony with our best and our highest interests, it is to be hoped, will lead us to forgive if we cannot forget. We all profess to be Christians. It is laid down that no one can have the spirit of Christianity without charity. Let a broad Catholic charity enfold us in its mantle. However great may be our ability and untiring our assiduity in promoting the public good, and however

ardent may be our patriotism, yet if we have not charity we are nothing, charity suffereth long and is kind; charity envieth not; charity vaunteth not itself, is not puffed up, doth not behave itself unseemly, seeking not her own, is not easily provoked, thinketh no evil, rejoiceth not in iniquity; but rejoiceth in the truth, beareth all things, believeth all things, hopeth things, endureth all things. We have quite long enough been made the sport of designing politicians. It is quite time that we put aside our local petty bickerings and cease to be led by artful demagogues. Taken altogether we are but a handful of people. With all our strength united we are but weak; but divided and torn asunder by the memories of the past and the illusions of the present, in asserting our rights in the halls of the national legislature, our numbers are never counted, our voice is never heard, and our strength is never felt. No country can ever become great and wealthy whose population is torn asunder by intestine prejudice, envy, hatred and strife; whose population does not refer all differences to be settled by the judgment of its Courts according to the law of the land; whose population have recourse to violence and unlawful action for the redress of real or imaginary wrongs, instead of to the customary and lawful channels pointed out by the law; whose population do not loyally submit to the lawful and constitutional decisions of Her Majesty's Courts and of those executive and constitutional officers, whom the constitution clothes with the responsibility of carrying into execution, or forbearing to carry into execution the sentence of her Courts; in short, whose population was not a law abiding people in the most extensive sense of the word. So here in this country we need not expect immigration and capital will come to us except we inspire confidence as to law and order, and as to the security of investments and the protection of life and property; and we cannot do this so long as it is necessary, if it is in fact necessary to keep in our midst a military force to repress internal violence. In all British communities public sentiment is a sufficient sanction to the decisions of our Courts, the execution of its process, the repression of violence and commotion, and the preservation of peace, and the maintenance of law and order in society. Why should it not be so with us in this Province? Who is disposed to stir up disorder and counsel a breach of the peace and a disregard of the lawful acts of those constitutionally in authority? I am already of opinion none such can be found. All have equal rights before the law, and all must obey the law and be governed by it. Let these words sink deep into your hearts, and when you return to your homes impress them upon your neighbors, acquaintances, and those with whom you mingle and associate, and your gathering here aside from your other duties, will not have been in vain; and one of the great objects of the grand jury system being made part of the administration of justice will have been attained.

As to the material state of the country, it certainly is not encouraging. No country can expect to prosper under the circumstances and in the conditions in which we are placed. We have everything to buy and nothing to sell. During the past year we have imported not less than two and a half millions of dollars worth of goods, and we have exported nothing but some furs from all the great North-West, worth perhaps three hundred thousand dollars, and even this money comes not back, but goes into the pockets of persons in England, and if any of it is returned, it is in goods imported. For the payment of these large importations, and for freight on them and other charges, we have to rely entirely on the small sums brought in by immigrants, and the miserably small outlay on public works by the Government at Ottawa. This course of things cannot last. We must begin to produce something we can give in exchange for imported commodities, and turn our attention to manufacturing the coarser implements and articles which we require and cannot do without, and in this way lessen our importations as much as possible. Far too many of those who come here desire to acquire property suddenly, by trade and speculation, instead of entering upon the production of something which is necessary to the production of something else, and in this way, by a home production supply, a home demand or a foreign market, and thus add to the produced wealth of the country. Merchants and traders are no doubt necessary in a community. But it must not be forgotten that they are mere exchangers, not producers or creators of wealth. So

with the lawyer and the surgeon; and so with a large class who live by their wits, but in fact live on the production of the producers. In this country agricultural pursuits, in its grain raising, in its cattle and sheep raising, in its raising of horses, making of butter, in its root growing offer the readiest and most obvious field for production, all of which for some time to come would find a ready and remunerative home market—always assuming the land is not soon to be again cursed with grasshoppers—and to these pursuits many now seeking a speedier method to success by engaging in trade or speculation, will be obliged to turn their attention or become paupers on the industry of others; for Manitoba, if it ever becomes anything, is destined to be eminently and almost exclusively an agricultural country. What we must have, and that speedily, is direct railway communication between Winnipeg and Lake Superior on British territory, and a winter outlet by railway to Winnipeg with the railway system of the United States. Without these we can never hope to be anything, and all the outlay made by Canada in Rupert's Land is lost; with these, in ten years we will have in Manitoba alone a hundred thousand population; and all the outlay already made and that shall be made in accomplishing these public works will prove the most remunerative investment of Canada.

I should like to speak of the just claims of the Province in respect of the subsidy which should be paid to her to put her on an equal footing with the other Provinces of the Confederation, but I see that I have not time.

I will, therefore, pass to some definite observation on your duties as grand jurors, but before doing so I wish to make a remark or two concerning what in law is called embracery. The excellency, fairness, impartiality, safety and confidence of enquiry by a grand jury and trial by a petit jury, may be entirely defeated and destroyed by embracery, which is making advances to jurors by persons outside addressing to the jurors explanations, arguments, appeals to passions or prejudices, inducements by way of offers or promises or in any other manner, considerations which are calculated to influence the jurors in the determination of the matters which are to be brought before them; and which by law they are sworn to decide alone by the sworn testimony given before them in the grand jury room in the case of grand jurors, and in the witness box in open court, in the case of petit jurors. This offence, to a certain extent, I am afraid, has been practised in Manitoba. It is a grave offence both in the juror who permits such advances, and the person making them; and both committing this offence are liable to indictment and heavy punishment. I warn all petit and grand jurors to beware of this offence. Under no circumstances, and for no cause however plausible, permit any one apparently excusable and innocent it may be to speak one word to you about any matter you are already considering or which may be brought under your consideration for decision. A contrary course will sap the foundations of trial by jury and eventually overthrow our whole judicial system.

I wish to make another remark in respect of abuse and threats to jurors for the manner in which they have decided. This was done, as I was informed, in the case of a decision by a jury the last sitting of this Court. This, also, is a grave offence, for which those guilty of it are liable to be indicted and visited with heavy punishment. In the case I allude to I have since regretted I did not direct a prosecution to be instituted against all those who could so recklessly trample the sacred rights of conscience, and the sanctity and purity of the administration of justice. I give this warning to those who have offended, and who shall offend, in this direction, that if there be a repetition of what took place last court, and it comes to my knowledge, every offender will be proceeded against, and if convicted will be signally dealt with.

I am happy to inform you that the criminal calendar is very light. There are six cases of larceny, one of homicide, and one of perjury, brought before you, as appears by the statement before me.

Supplementary Remarks.

His Lordship informed the grand jury that the above was as much as he had had time to write, but that he would make a few remarks in regard to the calendar.

The three kind of offences charged with which the grand jury would have to deal were larceny, homicide and perjury. What constituted larceny was generally understood, and needed but very little explanation. It consisted in the appropriation of other persons' property without their consent. It became the jury to first ascertain if such an act had been committed; if so, it was then for them to determine by whom. Homicide was the killing of a man, no matter how the killing came about. The British law was such that no man could be killed by another, without investigation. It sometimes was the result of such accident that no blame could attach. In such case the party instrumental in the death was not punishable; but fatal accidents were sometimes the result of gross carelessness, and for such the party was held responsible, and might be punished for the crime of manslaughter. Perjury was probably one of the most abominable offences known to the law. The simple liar was despicable enough; but when a man enforces a falsehood with another, it was simply terrible. The law provided vigorous punishment for this offence, as the commission of this offence might not only rob a man of his property, but of his liberty and life. A false witness could swear a man out of his property, destroy his liberty, or even take his life. It was very rarely that this offence was brought to light, save through spite. Ordinarily it was to gratify revenge that one party complained of perjury against another. However, the motive that led to the complaint being made, was not a matter for the consideration of the law. It became the jury to weigh carefully the evidence that the Crown counsel should suggest, and if the jury felt that more was required, they could make their desires known to the Crown counsel, and if the counsel thought proper such evidence would be procured.

There was a class of cases that required magisterial investigation before being brought before the grand jury. This class included perjury, indecent assault, obtaining goods under false pretences, and a few others. The purpose of the law in this particular was to prevent injury to innocent persons who might be the victims of spite. If the grand jury were persuaded that the evidence brought before them was such, that had they been petit jurors, and it coming before them from the witness box, and they deeming it sufficient to return a verdict of guilty, it was their duty to find a true bill and send the case up for trial, but if the evidence were less conclusive, then it was their duty to ignore the bill. His Lordship added that it was the duty of the grand jury to visit the jail, and if they could find it convenient he would recommend them also to visit the penitentiary. The jail, as far as he had seen it, was exceedingly well kept. His Lordship congratulated the jury upon the scarcity of crime, which was worthy of special remark. The morality of the city was also notable. The Province, he believed as a whole, could read a lesson to almost any county in Ontario on the scarcity of crime; and he believed that so soon as the offences growing out of the troubles of '69-'70 were disposed of, there would be but little serious criminal business to dispose of at these Courts. His Lordship then ordered the grand jury to be conducted to their room.

JUNE, 1875.

His Lordship Chief Justice Wood, delivered the following

Charge:

Gentlemen of the grand jury,—I am happy to meet the grand jury of this Province, after having presided over this Court now for one year.

The laws defining the civil rights of a people, and the administration of those laws, in connection with an impartial and unwavering administration of criminal justice by Courts, lie at the foundation of the peace, happiness, liberty, order, security, advancement and prosperity of a nation. It is one of the laws which we have adopted, and of the system of government under which we live and are organized with political autonomy, that they are not imposed upon us by any Cæsarean power, either without or within, but spring from, and are in fact, the spontaneity of and rest for their sanction and authority upon the people themselves. Both these, to a large

extent, are under the legislative jurisdiction of the Province; and while the former in so far as they affect property and civil rights, which is of a wide and extended range, may from time to time be repealed, altered, changed, amended, supplemented, or done away with and new laws enacted in their stead, so also may changes be effected in the framework of our civil policy, provided they be within the limits prescribed by the constitution.

It is also a peculiarity of our system of the administration of justice, that the people themselves form an important part of our courts. While we have judges, learned in the law, to preside over our courts, who are independent both of the Crown and people, and can be called to account only for nonfeasance, misfeasance, or malfeasance, and, as a rule, are amenable alone to the bar of enlightened public opinion, we at the same time have petit jurors and grand jurors, selected at short intervals, in all parts, from the body of the people, with whom, if pushed to the extreme, rests on the last reduction, the final decision in every right, and the final acquittal or conviction in every offence.

There can be no question that jury trial in general may properly be looked upon as at once the excellence and the glory of English jurisprudence. In sober reason it is no small birthright, and no small privilege to belong to, and be one of, a nation, the meanest subject of which cannot be affected either in his person, his liberty, or his property, except with the consent and judgment of a jury of his neighbors and equals—a fundamental principle in the constitution, which more than any other single cause has secured to the people their just liberties, and to the nation immunity from change and revolution in the essential features of its government for a long succession of ages; and we see no ground for conjecturing that the time will ever come when those liberties and that immunity from disruptive revolution or other causes, will be surrendered, lost or overthrown. We, therefore, are not apprehensive because Rome, Sparta, Athens and Carthage, and other nations lost their liberties, and time in his hurried march has swept them from the map of the nations of the world, that England will one day be what the land of Priam and Demosthenes are now, and other new nationalities arise to be what England was, that the time will ever come as has been suggested by Lord Macaulay: "When some traveller from New Zealand shall in the midst of a vast solitude take his stand on a broken arch of London Bridge to sketch the ruins of St. Paul's," or "when the sceptre shall have passed away from England, and travellers from distant regions shall in vain labor to decipher on some mouldering pedestal the name of her proudest chief, shall hear savage hymns chanted to some mis-shapen idol, over the ruined dome of her proudest temple, and shall see a single fisherman wash his nets in the river of ten thousand masts"—according to the theory of those historians who regard the life of a nation as analogous to the life of man—having its infancy, its youth, its maturity, its decline, its old age, its decay, its final dissolution.

The constitution of the nations to which I have referred, as well as of most, if not all, the modern nations of Europe, whose judicature is founded on the doctrines and procedure of the civil law were, and are, widely different from that of England.

The impartial administration of justice, which secures both the property and person of each member of the commonwealth, is the great end of civil society. A state that has established confidence in this respect has accomplished its greatest function. This was wanting in all the nations of antiquity; and it is absent in many of the modern kingdoms. They had not, and have not trial by jury, to ascertain facts, before Judges whose highest authority only enables them to state the law and recommend its application to the facts so ascertained, so that according to the great character "no one may be arrested or imprisoned, exiled, or destroyed, except by the lawful judgment of his peers, or by the law of the land."

Our judicature is like our liberty, "it is neither Greek nor Roman, but essentially English. It has a character of its own." It is not moulded after Imperial or Republican models. Like our civil policy, it springs directly from the people, and is interwoven into every web of society. Its process, its judgments and decres, are not executed or enforced by a ubiquitous police, or an omnipresent military power; but

they derive their authority and sanction from the intelligent sentiment of order and justice in the heart of the nation.

The introduction and incorporation of all classes into the administration of justice is an element in our jurisprudence, which distinguishes it from the judicial system of all other nations, both ancient and modern, and greatly conduces to the respect, submission, and veneration which, in British communities, are eminently accorded to the judgments of our Courts, and to that stability of the Throne, and the permanency of our political institutions, which have rendered their foundations immovable amid the shock of revolutions with which the nations of the world have been convulsed within the last century.

These considerations and many others which might be suggested should teach you, should teach you all, how important it is that you have at least a general knowledge of the laws of the land in which you live. Aside from the general duty all owe society, to protect it from any unlawful aggression, and the advantage of being able to form a tolerably accurate idea of the rights and obligations springing from the multiplied relations of individuals, in trade, commerce, and in the infinite variety of pursuits, and industries of civilized life, all are liable to be called upon, as you now are, to perform the important function of grand jurors, or as the petit, now assembled here, are to decide the rights of property and civil obligations arising between man and man, to pronounce upon the guilt or innocence of those who are charged with offences against society; and as I have already remarked in the last reduction these findings and decisions are final, and from these there is no appeal.

Again, it must not be forgotten that we live under representative institutions, in which all power emanates from the people. Under such a Government the power wielded by the popular branch of the Legislature is, within the limits of its jurisdiction, omnipotent. Any of you may be called upon to discharge the duties of legislator—all, to exercise the highest prerogative of freemen, to vote for a properly qualified person to take his seat as a representative of the people, in the halls of legislation. To know what laws should be made (if any,) and to know how to make them; to understand that a grievance or mischief exists, and to be able skilfully to devise and successfully apply a remedy; to apprehend the danger attendant upon intermeddling with customs, statutes and laws, hoary with time and consecrated by the experience of ages, demand and require some considerable research, study and reflection, and some preparation and training. At all events the legislator should have sufficient acquaintance with the general principles of the laws to deter him from dogmatism where he should be all deference; from arrogance where he should be all submission; and from presumption where he should surrender, and subordinate his own imperfect notions to the matured experience of those who have made the law their special study. No man is born a legislator. Cicero thought, and thought rightly, that it was a necessity to a skilful and successful legislator that he should understand the constitution and laws of his country; which, he says, implies extensive knowledge, great industry, and a richly stored memory, without all which he will fail, properly to discharge his duties.

The great commentator on the laws of England so long ago as 1765, said:—

"The mischiefs that have arisen to the public from inconsiderate alterations in our laws are too obvious to be called in question; and how they have been, owing to the defective education of our senators, is a point well worthy public attention. The common law of England has fared, like other venerable edifices of antiquity, which rash and inexperienced workmen have ventured to new dress and refine with all the rage of modern improvement. Hence frequently its symmetry has been destroyed, its proportions distorted, and its majestic simplicity exchanged for specious embellishments and fantastic novelties. For, to say the truth, almost all the perplexed questions almost all the niceties, intricacies, and delays (which have sometimes disgraced the English as well as other courts of justice) owe their original, not to the common law itself, but to the innovations that have been made in it by Acts of Parliament, "overladen (as Sir Edward Coke expressed it) with provisoes and additions, and many times on a sudden penned or corrected by men of none or very

little judgment in law." This great and well experienced judge declares, that in all his time he never knew two questions made upon rights merely depending on the common law; and warmly laments the confusion introduced by ill-judging and unlearned legislators. "But if (he subjoins) Acts of Parliament were after the old fashion, penned by such as knew what the common law was before the making of any Act of Parliament concerning that matter, as also how far forth former statutes had provided for former mischiefs and defects discovered by experience, there should very few questions in law arise, and the learned should not so often perplex their heads to make atonement and peace by construction of law between insensible and disagreeing words, sentences and provisoes as they now do." "And if this inconvenience was so heavily felt in the reign of Queen Elizabeth, you may judge how the evil is increased in latter times when the statute book is swelled to ten times a larger bulk, unless it should be found that the penners of our modern statutes have proportionably better informed themselves in the knowledge of the law."

I have been led to make these observations from the confusion and distortion of the laws of this Province, made by numerous Statutes, ill-conceived, unnecessary, badly worded, illogical, and even if required to remedy any mischief (which they were not) inadequate to the purpose which during the existence of the first Legislature found their way on the Statute Book of this Province. At last a Statute was passed adopting the laws of England, and the practice of her Courts as they stood on the 15th July, 1870, the birthday of Manitoba. I think I may say, without exaggeration, that Act gave to us the most complete body of laws in respect of property and civil rights to be found in the world. We also have the criminal law and procedure in criminal matters, as they existed in England at that time, except as they may have been since changed or modified by the express enactments of the Parliament of Canada. The first session of the second Legislature, which has just closed its labors, in this direction, as a whole, has done a noble work for the Province. It has repealed or superseded many, if not all, the absurd and abnormal acts of previous legislation, and in their stead has placed on the Statute Book measures adopted to faciliate and give effect to the law already existing, and in some measure moulding the law and its practice so as perfectly to fit the circumstances and conditions of the country and its inhabitants. I fully concur in the remarks of His Excellency on proroguing the House, that "The Act for the better administration of justice, and the kindred Acts respecting overholding tenants, the imposition of stamps on legal proceedings, the office of sheriff, the government of gaols, the erection of county court houses, and registry offices, relating to justice of the peace and respecting fines and forfeitures (and he might have added, respecting short forms of indentures, choses in action, actions against and by the Crown, and in respect of grand jurors, and for the care of lunatics), are improvements of the existing laws, and will conduce to the advantage of the population."

But it was obvious to any one who watched the proceedings of the House that the "rage" was manifested by some of its members, for signalizing and rendering themselves immortal by making "innovations," and "improvements," on laws which the most gifted, the most experienced, the most thoughtful, and the most wise, of many generations have pronounced to be in form, faultless, and in substance, the perfection of human reason. Fortunately for the country, the good sense of the majority, in the one or the other of the Houses, repressed these attempts at startling and disastrous innovations.

You will therefore understand, gentlemen, how indispensable it is that you should have some knowledge of the constitution and laws of the country in which you live, properly to fulfil the obligations daily devolving upon you in your intercourse one with another, and creditably to discharge the duty you owe to society at large, and the nation to which you belong.

I need scarcely allude to the vast importance of those placed upon the commission of the peace understanding the outlines and rudiments of the principles and practice of the laws, especially in matters of summary conviction, and in preliminary proceedings in indictable offences. These gentlemen are, to a large extent, the

repositories of the peace and order, and the security of life and property, in the several neighborhoods in which they reside. An intelligent and conscientious magistracy is the surest safeguard society can have against the aggression of crime. With such a magistracy the protection of the innocent and the punishment of the guilty are assured. Without it the defenceless is robbed, may be murdered, without redress, and the bold criminal goes unwhipped of justice.

I am happy to tell you, gentlemen, that the ineligibility of magistrates to be grand jurors was removed by an Act of last Session, so that now they may be, as they ought always to have been, on the grand jury. Indeed, I hope hereafter they will be chiefly selected from that body, as by the status they hold in the several localities in which they live, they are presumed to be, and no doubt are, well qualified for the position; and while discharging their duties as grand jurors will become familiar with the proceedings of courts of justice, and by observation and attention will unconsciously acquire considerable knowledge of the laws.

Since I came to this Province, by the assistance and hearty co-operation of my brother judges, most cordially seconded by His Excellency and his advisers, an entire revolution has been effected in our Courts, and in the administration of justice, but the changes have been so gradual as hardly at each successive stage, to attract observation. The costs, both in the Court of Queen's Bench and the County Court, which no doubt were unreasonably exorbitant, have been reduced and clearly prescribed, so that justice is now within the reach of all. The practice, which was involved in great ambiguity, has been clearly defined, so that at common law, in equity, and in probate, "he that runs may read." The County Court has been made emphatically "the poor man's Court," in which every one may be his own lawyer. The costs are quite as low as in the Division Court in Ontario, or in the collection of small liquidated claims in Quebec. Fixed periods for holding this Court have been adopted; and His Excellency has power to increase and extend the holding of this Court to new settlements, when centres of population shall justify such action.

With the changes made in respect of the trial of issues of fact by a judge, and the summoning of only one set of petit jurors instead of two, and other ameliorating alterations, with the fact that no more criminal litigation will be had, arising from the troubles of 1869-70, I confidently anticipate that the administration of justice will not cost the country per annum over one-third what has hitherto (or at all events prior to the year just closed) been paid for that service; and all this notwithstanding the large increase of a foreign population. If the same retrenching principles shall be extended, and applied to the other services of the Government it will not be difficult to bring the expenditure of the country within its normal income—leaving a considerable overplus to apply in aid of local taxation for local general improvements, such as roads, bridges, and the erection of county buildings.

Amid many discouragements the settlement of the country is steadily going on. By reason of the half-breed, railway and other reservations, the new settlements are scattered, and far removed from each other, and from any central point of trade. This has operated greatly against the rapid settlement of the country. Add to this the depressing effect produced by the appearance of grasshoppers, and it is not at all surprising that the people are not animated with that hope which is the great motive power of human action in battling with, and overcoming those difficulties which necessarily intervene in the settlement of a new country. However, wisdom teaches patience and perseverance. If we sow and plant and the grasshoppers will leave us half a crop we shall still have a better yield, and with much less outlay than many husbandmen in more favored lands—so easy of cultivation, and so prolific in production is our soil.

We are informed by newspapers that at last the half-breed reserves are to be disturbed, and the scrip given to others entitled by law to the same; and that a commission has been appointed for the purpose. All must rejoice that after so long delay, tardy justice will at last be done the Metis and others interested in the reservations and provisions.

Every one knows how essential it is to the advancement and prosperity of any community that the title to land should be unquestionable, in order that commerce in it may be had with confidence. By the Manitoba Act (33 Vic. Cap. 3) all persons holding lands from the Hudson Bay Company as freehold, or lease estates, or by occupancy with the consent of that Company in that part of the Province where the Indian title has been extinguished (generally known as the Settlement Belt) were forthwith to have patents granted to them by the Crown; all persons holding peaceable possessions of tracts of land, in parts where the Indian title had not been extinguished, were to have the right of pre-emption. Over five years have passed since the passing of that Act; and in so far as I know not a solitary patent has been issued under it. This has greatly embarassed and prevented the introduction into, and investment of capital in this country; as no certain security of lands could be given, and as a consequence, coupled with other cases, the price of money has, like everything else, been at fabulous rates. At last we are told a commission like that in respect of the half-breed lands is to be sent from the "East" to settle disputed questions in respect of persons to whom patents should issue, and to do that which one would think might have been accomplished years ago. Feeble and impotent as we are, we have only to submit and thankfully accept the pleasure of superior power. We rejoice that this great impediment to our prosperity is about to be removed.

The public buildings for the Customs and Inland Revenue, and for the Public Lands are drawing to a completion; while it is to be hoped that the Post Office and the portion of the Penitentiary under contract will be prosecuted with reasonable dispatch.

At last two portions of the Pacific Railway between the Lower Fort and Thunder Bay have been put under contract, the one from Thunder Bay to Lake Shebandowan, about forty miles, and the other from Rat Portage to within about six miles of the Red River, about seventy or eighty miles. The same firm of contractors, Sifton & Co., have both sections. It appears the line of the railway is to run across the Narrows, north of Lake Manitoba. Looking at the map of the North-West, and assuming that the country drained by the trunk of the Saskatchewan River is fit for cultivation, and that its branches are navigable, and that the produce of that vast region, settled and developed, will be drained by this vast stream and its tributaries into Lake Winnipeg, and thence by a railway tapping the southern end of that lake, eastward into Lake Superior, one can understand the line selected for the Pacific Railway. But the conclusion rests upon the assumption of promises which are controverted by every one who professes thoroughly to know from actual experience and personal observation, during all seasons of the year, the whole country lying between Lake Winnipeg and the Rocky Mountains. Let us hope that experience will not demonstrate that the location of this great transcontinental railway, like that of the Great Western, the Grand Trunk, and Intercolonial, has been a mistake.

The Pembina branch will afford no relief to intercommunion with the outer world. The contractor is simply to grade the road bed, and then for aught that appears, it is to remain until the frosts and the rains reduce it to its original state. No bridges are to be made, no culverts constructed. Even the grading commences some miles north of the boundary line and stops seven or eight miles short of Winnipeg.

Five years experience (last year being no exception) has taught the people of Manitoba that the Dawson route is a snare and a delusion.

When all is done that can be done, some years (I do not know but I should say) many years must elapse before by all rail, or by all rail and water combined, quick and easy transit will be possible between Winnipeg and Lake Superior.

We are, therefore, thrown back upon the Red River and the American Railways, or *via*. Duluth, Lake Superior. Every possible encouragement should therefore be given to those who are struggling to establish cheap and expeditious transportation on the Red River.

His Lordship then explained to the grand jury the nature of their duties, and of the criminal calendar which would be laid before them. He congratulated them upon the fact that there were but nine cases none of which were of a very grave

character, and that the lightness of the calendar spoke highly for a community situated as the Province of Manitoba was.

His Lordship Judge Betournay followed, giving the substance of the Chief Justice's charge in full.

OCTOBER, 1875. *Charge of the Chief Justice.*

The laws of England may be divided into two great branches, those which relate to property and civil rights, and those which relate to offences coming within the category of felonies and misdemeanors. Both spring from the supreme power in the State. The law commands what is right and forbids what is wrong. Therefore, a knowledge of what according to law is right and of what is wrong, cannot be exceeded in importance by any other human acquisition or attainment, for in every avocation, pursuit, or situation in a civilized state, the conduct of all must be regulated according to law. Rights may be considered in two aspects, rights appertaining to the person which may be called personal rights, and rights appertaining to external things or objects which may be called rights of things. Immunity from corporal injury and from restraint of liberty is an illustration of the one, as the protection and security in the possession of lands and other property are of the other. Wrongs are to be contemplated from two standpoints, and may be regarded as private wrongs or public wrongs. In the former class may be comprised all such acts as mark the infringement or privation of the private or civil rights belonging to persons, considered as individuals, and in the latter, a breach or violation of public rights or duties which affect the whole community, considered as a community; and these distinguished from the former by the harsher appellation of crimes, felonies and misdemeanors. But this classification is more fanciful than real, for an offence against any single individual is a violation of a public duty, and a crime against the whole commonwealth. It may, therefore, more properly be said that the infringement or violation of a private right may be, and most generally is, a public wrong. However it is not *à propos* on the present occasion, that I should pursue this line of thought further. My purpose is to make a few observations in respect of what are generally termed public wrongs, or felonies and misdemeanors. In its widest sense, crime, used in its technical legal acceptation, involves an examination and discussion of the entire criminal code of our country; or as it is sometimes denominated with us, the whole doctrine of the pleas of the Crown. The Queen, in whom centres the majesty and sovereignty of all the communities composing the Empire, is supposed by the law to be the person injured by every infraction of the public rights of those communities, or of any member thereof, provided it be a felony or misdemeanor or less offence, and is, therefore, in all cases the proper prosecutor for every public offence. Therefore, as has been aptly said: "The knowledge of this branch of jurisprudence, which teaches the nature, extent and degrees of every crime, and adjusts to it the adequate and necessary penalty, is of the utmost importance to every individual in the State. For (as a very great master of the Crown Law has observed on a similar occasion) no rank or elevation in life, no uprightness of heart, no prudence or circumspection of conduct, should tempt a man to conclude, that he may not, at one time or other, be deeply interested in these researches. The infirmities of the best among us, the vices and ungovernable passions of others, the instability of all human affairs, and the numberless unforseen events, which the compass of a day may bring forth, will teach us, upon a moment's reflection, that to know with precision what the laws of our country have forbidden, and the deplorable consequences to which a wilful disobedience may expose us, is a matter of universal concern. The criminal jurisprudence of England has, with the advancement of the civilization of the nation, and with the progress of Christianity and the consequent development of the sentiment of humanity among its people, been divested of most, if not of all, of that undue severity and unreasonable harshness with which, at the common law, in the earlier days of our judical history,

it was to some extent disfigured. It has by successive legislation at last settled down on principles that are permanent, uniform and universal; and in all its parts it is conformable to the dictates of truth and justice, and to the feelings of humanity, and the indelible rights of mankind. Crimes are accurately defined; penalties are limited within fixed boundaries; accusations and preliminary examinations, as a rule, are public; in all the different steps the accused may have the advantage of counsel; the evidence against him must be given in his presence, and he may sift the testimony by the most searching cross-examination; he may at any stage of the proceedings, produce and have examined in his defence any and all witnesses; at least twelve of his neighbors and fellow-subjects must, before he can be put upon his final trial say upon their oath that the sworn testimony of the witnesses produced before them on behalf of the Crown, satisfied them, not that there is a suspicion of guilt, or ground for further investigation, but that he is guilty; and lastly, his final trial is in the face of the world; and the final judges of his guilt or innocence are twelve of his peers against each of whom he can advance nothing; and the punishment, except in cases of capital felonies, is within definite limitations, left in the discretion of the judge to be exercised in view of the character of the offender and the facts and circumstances surrounding the commission of the offence as disclosed in opening court under the sanction of oath, and to be pronounced before the face of all men. As you, gentlemen, will have observed in the remarks I have made, the grand jury forms an important function in the machinery of the administration of the criminal law. The origin of the grand jury system is found in the early history of English criminal jurisprudence; and through all the changes of dynasty and revolution it has not only maintained itself in its full strength at home, but its roots striking down deep into the soil of the "Little Island", and extending underneath oceans, it has sprung up on islands in distant seas and on faraway continents with a vigor equal to that of the parent plant. The grand jury has always consisted of a body of men selected from gentlemen of the first figure in the country, to perform, as I have already intimated, a most important function in the administration of criminal justice. Its paramount duty is to protect the innocent from accusation and to bring the guilty to trial. Strictly speaking it has no political nor any other civil power; and, as a rule, it should confine its deliberations to infractions of the law, and to the identity of the persons who have committed those infractions. At the same, I cannot say it is altogether beyond the sphere of duties which a grand jury may assume, especially in the formative state in which society finds itself in its new, far away, isolated and exceptional position in this youthful Province, to call attention to any facts or circumstances which tend to the commission or the prevention of crime, or admittedly retard the advancement of the country materially, socially, or morally, and suggest such remedies as in its judgment would remove the grievances pointed out. It is also within the line of duty of a grand jury to visit and inspect the common gaol of the Province and any institution maintained at the public expense, in which persons are confined, and make such observations and report upon their condition and management, as to the grand jury may see advisable. But as I have said, the principal business of the grand jury is to deal with indictable offences. In doing this the Crown counsel will place before it indictments charging specific offences against certain persons, with legal certainty. On the back of each indictment will be found the names of the witnesses by whom it is sought to bring home the charge made in the indictment. These witnesses will be sworn by the foreman and their statements on oath will be heard. It is not usual to hear any witnesses except those whose names are placed on the back of the indictment. After all the evidence is heard, it will then be for the jury to say, (1) whether or not the offence stated in the indictment has been committed; (2) and if committed whether or not it was committed by the person charged with it in the indictment. Each of these questions may be debated, and should be decided separately; and the jury, with the assent of twelve of its members may make any amendment, either in the description of the offence, according to the view it may take of the testimony and the law, or in the description of the offender if any one else should be shown to have committed the offence. If both the questions

I have stated be found in the affirmative by twelve or more jurors, a true bill is said to be found, and the foreman will write on the back of the indictment the words "True bill," and sign his name underneath, adding "Foreman," and so return it into Court; but if twelve, at least, of the jury do not concur in answering both of the questions in the affirmative, but answer either in the negative, then "No bill" is found; and the foreman should endorse on the back of the indictment the words "No Bill," and under these write his name adding the word "Foreman," and, as already directed, return the same into Court. As a general rule, only the evidence for the prosecution is laid before, or is to be considered by the jury. But the jury must recollect, that while the strongest obligation rests upon it to assist in bringing to trial the guilty, it is also a shield and a protection to the innocent. The Crown is, therefore, bound to deal fairly by the jury, and if it asks to have a true bill found, to place before the jury such testimony as would, standing alone and uncontradicted and unexplained, justify the jury, if it were trying the case, in pronouncing the accused guilty. Where the entire proceedings is *ex parte*, and the whole evidence for the Crown is heard, with no opportunity of explanation or defence, nothing short of this can justify a return of a true bill. If the jury require it, they may in any case ask instructions from, or take the opinion of the Court; but in all such cases it were better that all the juries should be present; and whatever takes place in this respect, should transpire in open Court. The Crown Counsel may also lend any needed and proper assistance to the jury. But all his communications to and intercourse with the jury in respect of the law or the facts before the jury should be made and had in the presence and before the face of the whole jury. The jury are sworn not to divulge what transpires in the jury room. I need not remind the members of the jury that in this respect their oath and public policy unite in enjoining upon them silence, and upon their proceedings the seal of secrecy. I am happy to inform you that the criminal calendar for the present Assizes contains no offences committed within Manitoba. Were this Province alone concerned, I should at once dismiss you and the petit jury to your homes, inasmuch as there would be nothing for either of you to do; for all the issues of fact in the cases in the civil calendar, although numerous, will be tried by a judge without the intervention of a jury, and after both juries have been discharged. Four cases appear on the calendar for offences committed in the North-West Territory, and beyond the bounds of the Province, but over which by Statute this Court has jurisdiction. I am sorry to have to say all these cases are for murder. James Hughes, Philander Wogel and George M. Bell, stand charged with the murder of several Indian men, women and children, at Cypress Hills in the North-West Territory, in the month of May, 1873. We all recollect the shudder of horror with which, after the bloody tragedy, we received the intelligence of the wanton and atrocious slaughter, by a lawless band of whites, chiefly from Fort Benton, of the Assiniboine Indians, peacefully encamped at Cypress Hills, having given no cause of offence, and all unsuspecting any attack, and whose first intimation of danger was the sharp rattle of the deadly repeating rifle from a treacherous and concealed foe. It was stated that some forty or more were shot down in cold blood. Indictments for complicity in this murder will be laid before you against the three persons whom I have named, and who have been brought upwards of a thousand miles across the plains and lodged in the Winnipeg jail. The other case is that of Angus McIvor. He is charged with two capital offences, one for the murder of one Atkinson by shooting him in the head with a pistol, and the other with shooting with intent to murder one Charette, both offences having been committed during the month of September last, not far from Fort Ellice, in the North-West Territory. These cases have the greater importance as the crimes involved were committed far away from the abodes of civilization, and where it might be supposed the arm of British justice would not reach. It is at considerable disadvantage in many points of view that the persons charged are at last brought before a court of justice. Public law and order, and the interests of justice alike demand that we should deal fairly but cautiously in all these cases. We must let it be known from the Rocky Mountains to the boundaries of Quebec and Ontario that all are

under the protection of, and answerable to, British law, and that however far removed from settlement, and however remote from the habitation of the white man, the commission of crime may take place, the Argus eyes of justice will find it out, and the law will apprehend, bring to trial, and punish the offender.

The Chief Justice then went into a definition of the offence of murder, and made some lengthy observations upon the treatment of Indians, their present position, and their probable ultimate fate. He also referred to the great advantage it would be to every justice of the peace to be in possession of the Criminal Statutes of the Dominion which have been lately published in one volume, and which might without doubt (if such had not already been done) be obtained, without any, or with but a small cost, to supply every justice of the peace of the Province. If these had not been procured, the Chief Justice suggested it would not be out of the way for the jury to confer with the Provincial Secretary on the subject.

JUNE 10th, 1876.

His Lordship Chief Justice Wood then charged the grand jury as follows:—

It is sometimes customary for judges, in charging grand juries to go more or less into the origin of the basis upon which the grand jury system is founded, but on the present occasion His Lordship did not intend doing that. As a regular system it has its origin in England, and there the different counties have their grand juries, but here, on account of the sparsity of population and the small size of the territory, we have only one assize, and consequently only one grand jury. It has always consisted of men of the most considerable substance and intelligence in the county in which the grand jury is empannelled, and here the effort has been to bring forward the intelligence and the morality and the public spirit of the whole Province. In most countries, but not here until recently, the magistrates constitute as a general rule the larger portion of the grand jury, and properly so, because the magistrates are important in preliminary stages of criminal investigations and a thousand other things, and by attending at Court and learning something of the administration of justice a great advantage is conferred on the magistrate acting in his own neighborhood. It has frequently been questioned whether the grand jury might not be dispensed with, or whether it might not be an inroad upon the administration of justice, upon a system which has been in existence for almost a thousand years, but the experience of nearly a thousand years has justified its retention. In all systems springing from the common law of England, and in all courts having their origin in that system as a rule, the grand jury has been maintained and is maintained at the present day. Therefore, Mr. Foreman and gentlemen, according to our system, no man can be convicted of crime without the judgment of at least twenty-four peers. At least twelve grand jurors must consider that there is *prima facie* evidence of guilt, and then twelve petty jurors concurring in his guilt. Your duty, as grand jurors, is to investigate, on a proper indictment to be placed before you, charging a crime or misdemeanor. To investigate first, has a crime been committed; secondly, who has committed it? The evidence which the grand jury must take, must be that given in their own room. If any grand juror knows any facts in connection with the case he may be sworn, but as a rule grand jurors should confine the evidence in respect of the crime to the evidence of witnesses whose names are endorsed on the back of the indictment, and who are the witnesses for the Crown. Grand jurors may, in conference with the Crown prosecutor, suggest that witnesses be produced before them who are not produced, but the Crown has a right to produce such witnesses, as in the judgment of the prosecuting party, are sufficient to make out a case. In ascertaining the sense of the grand jury, if there is a doubt that twelve or more do not agree, a vote may be taken, and the foreman is bound to endorse upon the indictment what they agree upon. On the calendar are three cases of murder, but indictments have been found two assizes ago. He was happy to say that no grave crime would be brought before them. There was only one case, larceny, to appear before them. There might probably be an indictment from

attempted escape from the penitentiary. It was scarcely necessary to take trouble to define larceny, but he would tell them that it was defined at common law as "the taking by one person of the property of another without his consent, with the intention of appropriating it permanently to his own use." Matters may come before the grand jury and they might ask the Crown barrister to prepare an indictment against certain parties; cognate with the last remark he would say that it was the duty of the grand jury to examine the gaol and gaol premises and any public institution, to the support of which the funds of the Province were appropriated. So soon as the grand jury should have finished their duty the Court would discharge them from further attendance at this Court. At the last session of the Provincial Parliament a Jury Act had been passed, and he saw by calling over the names of the present grand jury that there were very few persons on the jury speaking French. He fancied it was an accident in the working of the Jury Act, and had no doubt that it would be remedied at the first opportunity.

MARCH, 1877. *Court of Queen's Bench.*

First day, Tuesday, March 6th, 1877. Court opened at twelve o'clock. His Lordship Chief Justice Wood presiding.

The grand jury was called and sworn, after which His Lordship delivered the following

Charge:

Mr. Foreman and Gentlemen of the grand jury,—The adjusting and enforcing of the civil rights, arising between parties in the complicated relations and transactions in a civil state of society, are remitted to courts of justice. The question of fact is the great difficulty to be overcome in every matter of dispute, in respect of civil rights. "The principles and axioms of the law, which are general propositions, flowing from abstracted reason, and not accommodated to times or to men," are easily applied to facts, when definitely ascertained. The embarrassment that arises in every litigated case, is not so much the law as the facts involved in it. The law follows, as a logical conclusion, from the premises of fact. If the judge errs as to the law, he may be put right. But it is not so easy to detect, apprehend or remedy an error in fact. Blackstone says:—"In settling and adjusting a question of fact, partiality and injustice have an ample field to range in, either by boldly asserting that to be proved which is not so, or by more artfully suppressing some circumstances, stretching and warping others, and distinguishing away the remainder."

As a rule, questions of fact in litigation are more satisfactorily determined by a competent number of upright and sensible jurymen, chosen indifferently from amongst those in the same walks of life as the litigants; and, as I have said, the decision of the questions of fact in most cases being decisive of the matter in issue, the equals and neighbors of the disputants practically determine the rights of the parties in controversy. Besides other advantages, the trial by jury relieves the judge from a weighty responsibility, and throws upon the people themselves, who for this reason, and because they, in this way, participate so largely in the settlement and adjustment of their own rights, are much less disposed to find fault at an adverse decision, than though it were imposed on them by a superior power beyond their control, and of which they form no part. It has been not inappropriately said that the trial by jury is the glory of England, and has done more to establish the throne on a sure and lasting foundation, than her fleets and her armies. The jury system is the surest bulwark of the personal rights and liberties of the subject, for when pushed to its full extent, it may exercise a final disposing power over all questions of private right, and private or public wrong. It should never be surrendered by a free people, who desire to perpetuate their liberties, and to transmit to their children those rights and that freedom which they have inherited from their forefathers. In our judicial system, we have the intervention of a grand jury, as well as that of a petit jury. The origin of the grand jury system extends back to an early period in the judicial history of our country. There are many notable instances in the past

in which the grand jury have stood between false accusations and innocence, arbitrary power and helplessness, thirsting for the blood of its victim. If it be important, tenaciously, to adhere to the jury system in matters of civil right, it is certainly of much greater moment in criminal proceedings. By it no person can ever be exposed to trial on any charge of felony or misdemeanor, except on the finding of a *prima facie* case of guilt by twelve of his peers, sworn as grand jurors; and, even after such presentment, cannot be convicted, except, after an open trial in court, by the unanimous verdict of twelve other jurymen, so that no person can be convicted of any felony or misdemeanor, except upon the judgment of twenty-four, at the least, of his peers. There is another great advantage in the jury system. At given intervals, it brings together a large number of gentlemen from all parts of the Province, who are, as I have said, by the constitution, made active participators in the administration of justice. They thereby become familiar with the forms of procedure, and necessarily hear and learn much affecting civil rights, and the obligations and duties pertaining to them and their neighbors, in their social relations, and as members of the commonwealth, and they return to their homes better prepared, and it is to be hoped, better disposed to discharge all the duties which devolve upon them as loyal subjects of the Queen. And there is yet another advantage. The conduct of the judge, and of the officers of justice, is open and exposed to their observations and criticism, which may have, and probably does have, a salutary effect in inducing caution and circumspection in the proceedings transpiring in Court. The functions of a grand jury are large and extensive. It is competent for them to investigate and inquire into any and all matters tending to the production or suppression of crime.

It is a part of their duty to make a thorough examination into the condition and state of the gaol and court house of the Province, and into the manner in which they are kept. In respect of the gaol, this is very important.

It is a rule that the grand jury may also examine and investigate all other public institutions of the Province on which public money is expended. If there be any such besides the court house and gaol they fall within the line of their inspection.

On all these subjects and on any other of a cognate nature to which they may think public attention should be drawn, it is their privilege and duty to make a presentment.

I now come to speak of your more immediate and direct duties—the consideration of bills of indictment which may be placed before you by counsel for the Crown. I am informed by the Sheriff that there are only four cases to be brought before you unless some new cases should arise: one assault, another false pretences, a third embezzlement, and the remaining one malicious shooting. The first two are not charges of an aggravated character, and may on investigation turn out not to be well founded. The first three cases arise within the Province. It certainly speaks well for our population that at the half-yearly assizes, only three cases arising within the Province are set down to be investigated, two of which are misdemeanors, and in all of which the accused are out on bail. The case for malicious shooting arose, as I understand, at Fort Frances, within the Territory of Keewatin, but has been sent here for trial.

I know nothing of the facts of these cases.

The first charge I have mentioned is assault. Every person is entitled as to his whole body, to security from all corporal insults or injuries, whether by menaces, assaults, beating, wounding or otherwise, though they may not amount to destruction of life or member. This is said to be a personal right, absolute and pertaining to every individual, sanctioned by the law of nature and by the municipal law of the land. An assault is an attempt or offer, accompanied with a degree of violence, to commit some bodily harm by any means calculated to produce the end if carried into execution. It may be an attempt or offer to beat a man without proceeding to touch him, as levelling a gun at another within a distance from which, supposing it to have been loaded, the contents might wound the person at whom the gun is pointed; the raising of the hand in a threatening manner, or a cane at another

within reach; or striking at but missing him. The touch of another's person, however slight, if done wilfully or in anger, and without justification, is an assault, and it is said the least touch of another's person wilfully or in anger is also a battery, which is the beating of another. Therefore there may be an assault without battery, but every battery includes or implies an assault. Abusive or threatening words cannot alone constitute an assault, they may indeed sometimes so explain the aggressor's intent as to prevent an act *prima facie*, an assault from amounting to that injury. An assault is said to be common or aggravated. A common assault is the ordinary commission of the offence with no unlawful, ulterior or atrocious design. An aggravated assault is such as is attended with serious bodily harm and such as indicate in the offender an intention to do a serious injury. In determining the character of an assault much depends upon the surrounding circumstances, and the intention with which the offence was committed. In a variety of cases this offence has been dealt with by particular enactments. The remedy for assault may be by a civil action of trespass. In this proceeding it is viewed as a private wrong or injury. But the offender may be proceeded against criminally before a justice of the peace or by indictment at the Assizes, for it is a public wrong as well as a private injury. It is a breach of the public peace, and is an offence against the community at large. In some cases the proceedings may be both by civil action for damages and by indictment for a breach of the peace. It is said that double proceedings may take place in assault, battery, wounding and maiming. It must be observed, however, as to all these acts, that to render them either actionable or indictable, they must be committed on an unlawful occasion. Thus, assault and battery are justifiable, where one who has authority, as parent or master gives moderate correction to his child, his scholar or apprentice. So also on the principle of self-defence; for if one person strikes another, or even assaults him, he may strike back in his own defence, and if prosecuted for it may set up as a bar to the proceedings, that it was the plaintiff's own original assault that occasioned it; and suppose a dangerous scuffle to take place, he may even for his own preservation (but not otherwise), wound or maim his adversary, and justify it under a similar plea. So likewise in defence of his goods or possessions, if one person endeavors to deprive the owner of them, he may justify laying hands upon him to prevent him, and in case the wrong-doer persists with violence, he may proceed to beat him away. There are a great variety of lawful occasions on which force and even violence may be used upon another person which the law justifies, but all coming within the principle I have indicated in the illustrations given.

It is proper in this connection to observe that, as a rule common assaults may be, and should be finally disposed of by justices of the peace in the exercise of their summary jurisdiction, and not by way of indictment. There is nothing apparent in the present case to except it from the general rule. It appears to have originated at Baie St. Paul, a long distance from Winnipeg, and as the offender is a woman, there would seem to be nothing in the case to justify the rather extraordinary proceeding by indictment at the assizes for a mere common assault, and the incurring of the large expense to the public which it necessarily involves, in disposing of a matter, which the law has wisely placed within the jurisdiction of justices of the peace, in the locality where the parties reside and are known, and the offence is alleged as having been committed.

However, it is now before us here and we must dispose of it.

An indictment charging this assault will be laid before you, in support of which, will also be produced before you the witness on the part of the prosecution. It will be your duty carefully to consider all these witnesses have to say, and then to determine, whether or not, under the definition I have given of the offence, and the observations I have made respecting it, the accused is really guilty of the offence charged. If so, you will find a "true bill," if not, you will find "no bill."

False pretences is closely allied to larceny, but distinguished from it as being perpetrated through the medium of a mere fraud. It was a misdemeanor at common law, punishable by fine and imprisonment. And now by Statute, whosoever shall by

false pretence obtain from another any chattel, money or security, with intent to cheat or defraud any person of the same, shall be guilty of a misdemeanor; and shall be liable to be imprisoned in the penitentiary for a period not exceeding three nor less than two years, or in any gaol or place of confinement for any term less than two years, with or without hard labor. There are in the Statute false pretences relating to several different matters, which I need not particularize, but all of which are based upon the principle of fraud effected by a false pretence—that is, by asserting something to be done which was false in fact. To make this offence complete, there must be a false pretence of an existing fact either in the present or in the past. A promissory pretence to do an act is not sufficient.

I have no idea upon what facts the present charge rests. It will be your duty carefully to examine into the case; and if you find that the accused told a falsehood respecting a then existing or past fact, through and by means of which he obtained from any person any chattel, money or valuable security belonging to any person, with intent to defraud—then a *primâ facie* case is made out, and you will find a "true bill;" otherwise, you will find "no bill."

Embezzlement may be said to be an aggravated form of larceny. It may be defined to be the act of feloniously appropriating to himself that which is received by one person in trust for another. Embezzlement in its usual acceptation imports the reception of a chattel, money or valuable security belonging to the master or employer of him who received it in the course of his duty, and the fraudulent appropriation of that chattel, money or valuable security before it gets into the possession of the master. As a substantive felony, this offence was not known to the common law. It usually involves larceny and a breach of trust. Our Statute defines several forms, or several subject matters in respect of which this offence may be committed, and declares it to be felony. It says:—"Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, steals any chattel, money or valuable security, belonging to or in the possession or power of his master or employer, is guilty of felony, and shall be liable to be imprisoned in the penitentiary for any term not exceeding fourteen years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labor, and either with or without solitary confinement."

I know nothing of the facts. The offence is a grave one. It implies confidence reposed and betrayed. It does more. It implies a larceny under circumstances in which the master or employer cannot guard against the theft. A man may by bolts, bars, locks and watchmen, protect himself against the midnight thief, but these will not avail him against a larceny by his own confidential clerk or servant.

The magnitude of the offence will, I am sure, induce you to examine and thoroughly sift all the evidence that shall be given before you on behalf of the Crown, and if you are from that evidence satisfied the offence has been committed by the person charged you will say so, but if this evidence does not satisfy you of the truth of the accusation you should say so and return the bill accordingly.

There is but one other offence—malicious shooting. What the nature of this charge may be I know not. All the information I have is, that the accused is charged with malicious shooting at Fort Frances in the district of Keewatin.

This may be a capital felony or a common assault, depending altogether upon the consequences of the shooting and the intention with which it was done.

The Statute says: "Whosoever administers or causes to be administered to, or to be taken by any person, any poison or other destructive thing, or by any means whatsoever wounds or causes any grievous bodily harm to any person with intent in any of the cases aforesaid to commit murder, is guilty of felony, and shall suffer death as a felon." The Statute further provides that any person who attempts to shoot any person with intent to commit murder, whether any bodily injury be effected or not, is guilty of felony, and shall be liable to be imprisoned in the penitentiary for life, or for any time not less than two years, or to be imprisoned in any gaol or other place of confinement for any term less than two years, with or without hard labor, and with or without solitary confinement. In either of the foregoing cases if the

evidence shows that an assault was committed, although the indictment simply charges the substantive felony, the jury may acquit of the felony, and find a verdict of guilty of assault. But I would in no case of this kind recommend the grand jury to find a bill but for such offence only as the sworn testimony which shall be given before them will justify. If the evidence only proves an assault, find a bill for an assault; if it establishes a graver offence act up to the proof; and in every case wherein the indictment placed before you is not in its charging clause in your judgment such as it should be, require and insist upon its amendment until it shall meet your honest convictions.

I have now briefly referred to all the cases on the calendar before me. Other cases may be brought before you which do not appear on this calendar, or which may arise while you are engaged in the discharge of your duties. If there should be any such you will give them your best consideration.

I will now make a few remarks applicable to your duties in general.

You are an independent judicial body, forming a most important part of the system of the administration of criminal justice. Your deliberations and judgments should be free from prejudice and external influence. Your investigations should be secret, as should also the expression of all opinions by any member of your body in the discussion or decision of any matter before you. Each has equal rights with the other, and in all things should speak and act his honest convictions. A concurrence of twelve is sufficient to find any bill, but there must at the least be twelve to warrant the finding of any bill.

In the inquiry into the charges which may be placed before you by the counsel for the Crown, you will be guided solely by the evidence of witnesses sworn by your foreman in your presence, and given *viva voce* before you. All experience teaches us how unsafe it is to rely upon any reports or rumors in regard to any matter, and especially is this the case in respect of criminal offences. It is bad enough when men's characters and motives are assailed in this way, but when such means are resorted to or permitted to exercise the slightest influence upon those charged with the administration of justice, it is simply intolerable. No man under such a state of things would be safe in his property, his reputation or his person. The basis of the framework of the social fabric would be sapped at its foundation. Therefore, let your judgment and finding in every case be founded exclusively upon the sworn evidence which shall be given before you in your grand jury room.

It has been said that the counsel for the Crown may be present and marshal the evidence before the grand jury. There may be cases involving complicated questions of fact in which this might be desirable, but, as a rule, it had better be dispensed with.

In all questions of law it is quite competent for the counsel for the Crown to instruct the grand jury; but they are not bound to take the law so given to them unless they think it correct. Wherever they have any doubt in respect of the law, or any other matter, they have the right to ask information from the Court, which, if proper, will always be given, and, when given, should be accepted and acted upon.

It is properly said that the essence of all crime is intention. The law of England assumes the freedom of the human will. Indeed, one does not well see how there could be any ground of moral obligation without assuming the free agency of man. Without this there would not be, in a moral sense, a right and a wrong in human action—a proposition, the affirmative of which is assented to by the universal race of man. However, this may give rise to speculations among casuists. The criminal law of England is reared upon the basis of the freedom of man as a moral agent. In considering all the cases that shall be brought before you, you will, therefore, if possible, find out the intention with which any action has been done, as giving a decisive cast to the whole transaction.

In the progress of your labors, if anything comes under your cognizance which you think should be presented to the Court, you can make a special presentment of the matter, and upon that presentment such ulterior proceedings may be taken or ordered, as the circumstances shall require.

At the conclusion of your labors, you will make a final presentment; and, unless something should occur further to detain you, you will be then discharged.

I now leave you to your duties.

OCTOBER, 1877. *Charge.*

Mr. Foreman and Gentlemen of the grand jury,—Again you are summoned from all parts of the Province to the Assizes, to discharge your duties as grand jurors, in the administration of criminal justice.

On occasions like this, in a Province upon which political autonomy has been but recently conferred, and many of whose people are not familiar with the principles and forms of proceedure of British Courts of Justice, I think it important, having through you the ear of the Province at large, to be more elementary than I otherwise would deem it expedient, in my introductory remarks to your more immediate duties.

The system of English jurisprudence, like the constitution of our political Government, springs from the people. It is not too much to say that, in this respect, both our jurisprudence and our civil Government are widely different from those of many, if not of all, of the nations of antiquity and of modern Europe.

If carefully examined, it will be found that the British policy, in connection with its juridical system—its *magna charta*, its *habeas corpus*, its *bill of rights*, its great body of written and unwritten laws—taken all in all, is the best system ever devised for the government of a great and free people—is the hope of the human race—is the *Genesis* and the *Revelation*—the *great Bible of human liberty*.

We can trace the origin of our civil government and of our judicial system back in old England for a thousand years, and thence further back, till the authority of historic narrative "is lost in the night of treacherous story."

After all the civil struggles through which the Anglo-Saxon race passed, when the clouds were cleared away, the grand old edifice of the English constitution stood forth in the "calm serene" in all its pristine strength and completeness; and as the great Lord Camden says: "Revelution restored the constitution to its first principles; it did no more. It did not enlarge the liberty of the subject, but gave it a better security. It neither widened nor contracted the foundation, but repaired, and, perhaps, added a buttress or two to the fabrick." The work of adding here a buttress and there a tower or pillow, and raising higher and higher its lofty dome, harmonizing it with the advancing thought and new developments of the age, is ever going on. But the present *status* of the British system of government has not been attained without long and protracted struggles, and great sacrifices of life and treasure. The contest raged throughout the long line of the Plantagenet Kings, the Tudor Sovereigns, and the House of Stuart. The irrepressible conflict was waged between prerogative rule on the one side, and on the other, parliamentary government. During this long struggle, constitutional liberty trembled in the balance. At length, in 1688, the great and decisive battle was fought and won, and parliamentary government was placed upon that high table land, and secured by such fortifications, fortresses and bulwarks, as to be impregnable to any assault. Two hundred years have since passed away; and while, during all that time, we have been constantly reforming abuses in the present, we have never ignored or lost sight of the precedents of the past; and, while our Government has been growing more and more democratic, hereditary monarchy has been growing stronger and stronger, and its roots have been striking deeper and deeper, and their fibres becoming more and more inextricably interwoven into the very heart of the nation, and the foundations of the throne have been becoming more and more fixed and immovable, and the throne itself farther and farther removed from any possible popular aggression.

"Our monarchy is ancient!
Our glory, it is grand!
And men of worth and station
Hold office in the land."

The contemplation of Great Britain, a little island in the midst of the ocean, swaying her sceptres over her vast Indian and North American continental possessions, over Australia and other Colonial dependencies, scattered over every land and in every sea and ocean in this wide world, exceeding in number sixty separate and distinct political organizations—all attracted to and revolving around her, as the great centripetal force which keeps each in its orbit and all with a precision and harmony, like that of the movements of the planets around the sun in the solar system, we may be pardoned for exclaiming:—

"A land of settled Government!
From precedent to precedent.
A land of just and old renown!
Where freedom broadens slowly down!"

Manitoba, and you, Mr. Foreman, and gentlemen of the grand jury, make a part of the British Empire; and to feel and to know that to all, the high and the low, the rich and the poor, the prince and the peasant, there is the same rule of law, enforced by the same tribunal, in which the assent and judgment of a jury, in every litigated controversy, when pushed to the extreme, is indispensible to a final adjudication, one would think every one might be induced to exclaim: "I am a British subject," with more exultation than ever a citizen of Imperial Rome, in her proudest day, shouted: "I am a Roman citizen."

We are apt to undervalue the rational liberties we enjoy, from the fact that we have never been made the victims of arbitrary rule or despotic power. It is only by consulting history and comparing our institutions and our system of the administration of justice, in all its departments, with those of other nations, both ancient and modern, that we can begin to realize the immeasurable advantages we, in these respects, enjoy over every other people that have ever lived, or that are now living, on the face of the globe.

It is a fundamental principle of our judicature, that no freeman shall be taken or imprisoned, or be deprived of his property, or liberties, or free customs, or be outlawed or exiled, or any otherwise prejudiced, injured or destroyed, or be passed upon or condemned, except by the lawful judgment of his peers, or by the law of the land. The lawful judgment of one's peers is that never to be forgotten and never to be overestimated birthright of every Englishman—to a trial by a jury of his countrymen and neighbors upon any litigation, whether relating to private rights or to public wrongs—at once the peculiarity and the glory of English jurisprudence, its soul, its spirit—the represser of tyranny, the safeguard of the poor, the buckler of innocence, the avenger of the guilty, the vindicator of our rights and our liberties, our opinions and our political principles.

The system of the grand jury—only a part of the jury system of our jurisprudence—takes its rise early in the legal history of our country. Its normal number should not exceed twenty-three, and a majority of that number at least is necessary to the finding any bill of indictment or information, So that every accused person must be declared guilty by at least the unanimous verdict of twenty-four of his peers—twelve grand jurors and twelve petit jurors—before he can be legally adjudged convicted of any offence. From this consideration alone you will have some conception of the safeguards which the law has thrown around innocence.

The grand jury in all British communities, is selected from the most considerable persons, as to position and intelligence, in society; and the law and practice, in this respect in Manitoba, forms exception to the general rule.

You, gentlemen, by the constitution of our country, are entrusted with most important functions. While a cognate part of the High Court of Oyer and Terminer, you have distinct duties assigned you which you should discharge independently and fearlessly, and without favor, prejudice or affection. It is your duty to make inquisition into, present and execute all those things which, on the part of Our Lady the Queen, shall be brought before you, or which the circumstances of the country may suggest to you as being of great public importance, and which you may see fit to take up, *tuo mero motu*.

Your chief practical work will be the examination of charges against persons, laid before you in the shape of bills of indictment by the gentlemen to whom has been committed the business of the Crown. In these investigations, you will, as a rule, confine yourselves to the examination of those witnesses and their evidence, whose names are endorsed on the bill of indictment. A grand jury hears only the witnesses for the Crown; but if, in the progress of the inquiry, they should desire that some person whose name is not so indorsed on the indictment should be produced before them for examination, they have the right to have him summoned, and should make known their wish to the counsel for the Crown, who, if practicable, will send him before the grand jury. You must not forget, as a rule, you hear only one side of the case. The accused is not present by himself or his counsel to confront or cross-examine witnesses, much less to offer any evidence by way of contradiction or explanation. The Crown is, therefore, bound to make out a clear *prima facie* case before you can be justified in finding a true bill. Some judges have used rather loose language in this respect to grand jurors—speaking to them as an accusatory body, and telling them that the finding of a true bill is only in the nature of an inquiry or accusation, which is afterwards to be tried or determined; and that grand jurors are only to inquire whether there be sufficient cause to call upon the party accused to answer the accusation. I am bound to tell you that this is a most dangerous doctrine, and that it is not supported or sanctioned by the great oracles of the law. The Justice's Court, in the preliminary examination, may be characterized as an accusing tribunal; and if a probable cause be made out, it is the duty of that tribunal to send the case up for further investigation. But the functions of a grand jury go beyond this. They must be prepared to say upon their oath, that from the sworn testimony before them a complete *prima facie* case of guilt has been established before them, before they can, according to law and the oath they have taken, find a true bill, and take the responsibility of sending the case up to be tried in open Court before a petit jury. In a majority of cases this direction may be practically unimportant; yet at every Court cases may arise in which an error in this respect may be a lasting injury to individual character; for you all will readily understand, how easily an innocent person may, on the contrary doctrine that a grand jury is only an accusatory body, be placed in the felon's dock, and, although acquitted on his trial, have a lasting stigma affixed to his reputation, without any possible redress. I solemnly charge you that this is not the whole duty of a grand jury in any given case. In addition to accusing, the evidence for the Crown must satisfy them that a *prima facie* case of guilt has been made out. A grand jury is an intervening body between society on the one hand, and persons accused of crime on the other. Its duty is to bring to justice the guilty, but to be a defence and shield to the innocent. In both of these respects, it is a safeguard and protection to the whole community and to every member of it.

In illustration of this point, I will refer to an incident narrated by Lord Campbell in his life of Chief Justice Pemberton. He says:—

"I now come to the most exceptionable passage in the life of Chief Justice Pemberton. While the King (James II) was nearly indifferent about Plunket, he was more eager than he had ever been during his reign to bring Shaftesbury to the scaffold; and this he knew would be accomplished as soon as he could get a bill of indictment found against him by a grand jury; for the doomed patriot would then have perished by a partial selection of peers in the Court of the Lord High Steward. To induce the grand jury to find this bill, Pemberton, although, as a lawyer, he was well aware that they ought to have a *prima facie* case of guilt made out, thus addressed them:—

"'Look ye gentlemen, I must tell you that that which is referred to you to consider is, whether there be any reason or ground for the King to call to account those who are accused, if there be probable ground, it is as much as you can inquire into. Where there is no kind of suspicion of a crime, nor reason to believe that the thing can be proved, it is not for the King's honor to call men to account, but a probable cause is enough. As it is a crime to condemn innocent persons, so it is a crime as

great to acquit the guilty. That God who requires the one, requires both; and let me tell you, if any of you shall be refractory, and will not find a bill where there is a probable ground for an accusation, you do thereby interrupt justice and make yourselves criminals.'"

According to Lord Campbell, of the many infamous judges who held office during the reign of the Stuart's Chief Justice Pemberton might, on the whole, have been excused for many departures from that high standard which has uniformly characterized the judges of the courts of Westminister Hall since the revolution of 1688, and since they have been made independent of the Crown, and might have been made an exception from that general condemnation, which history has passed upon them, but for this most reprehensible charge to a grand jury. Singular as it may seem, at this, the more than noon of the nineteenth century, some have not only suggested, but have boldly asserted, that the proper charge to a grand jury in this respect, is that of Chief Justice Pemberton in the corrupt times of James the Second, two hundred years ago, so signally reprobated by that eminent judge, Lord Chief Justice Campbell.

I have another direction to give you. In every case rely on your own judgment. No person—not even myself sitting here in Court—has any right to dictate you what shall be your finding in any particular case. The counsel for the Crown may, on being asked by you, answer any questions relating exclusively to the law; but you are not bound to to take even the law as laid down by him, if you have reasonable doubts as to its accuracy. In such a case, and indeed in all cases, you may, at any time, take the opinion of the Court.

Your deliberations, according to the oath you have taken, are to be secret. One, among the many other reasons for this, is, to ensure to your body perfect freedom of action. You may, if you see fit, permit the counsel for the Crown to be present when witnesses are examined, and to put questions and marshal the evidence. But it is inadvisable to permit this except where the witnesses are adverse or unwilling, and in cases involved in obscurity, and requiring a clearer elucidation than can readily be attained without such assistance. You may go so far, indeed, as to permit an explanation of the purport and meaning of the indictment, and of the charge and of the manner in which the Crown proposes to sustain it. But it should be limited to an explanation, and the counsel for the Crown should be kept within the limits I have suggested. He should not be allowed to be present at any deliberation after the evidence has been closed. I repeat, in respect of the conclusions at which you shall arrive, you must rely solely on your own judgment, independent of the opinion of the counsel for the Crown altogether. If, under the directions I have given you, you think the evidence proves the charge, you will endorse on the bill the words "True Bill" and your foreman will write his name underneath them; if you think the evidence does not sustain the charge, you will endorse on the bill the words "No Bill," with the signature of your foreman subscribed underneath them. By finding "No Bill" you by no means declare the person accused to be innocent, you simply say the evidence does not satisfy you of his guilt. If better evidence can, at any future time, be produced, a new bill may be preferred before the same, or another grand jury. Indeed, another bill may be laid before another grand jury on the same evidence.

I am happy to inform you that the calendar handed to me by the Sheriff is very light—consisting of only four cases in all—three arising within the Province of Manitoba, and one within the adjoining District of Keewatin. Of the former, two are simple larceny and the remaining one for threatening to burn buildings. That arising in Kneewatin is more serious. It is infanticide. I am not aware of the facts surrounding any of these charges; and if I were, it would be inexpedient for me to state them to you, or to comment on them. It is much better you should hear them fresh from the witnesses, who will appear before you, under oath.

The only information I have in respect of the first offence is from the calandar itself, which designates the charge simply "threatening to burn." I infer the charge is "threatening to burn buildings."

There are a variety of circumstances under which "threats" are cognizable by law. Threats or menaces of bodily harm or hurt, whether made orally or by com-

munication in writing, or otherwise, may subject the party making them to punishment, and to the giving of security to keep the peace. In some cases threats of violence are by Statute made felony, and on conviction the maximum penalty is imprisonment in the penitentiary for ten years. The law regards threats of violenc as an invasion of the rights of personal security, and interposes signal punishment for the protection of the innocent and for a terror to the guilty.

The Statute has marked with emphasis certain kinds of threats communicated in a certain manner. It provides that—"Whosoever sends, delivers, or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw, or other agricultural produce, etc., is guilty of felony, and shall be liable to be imprisoned in the penitentiary for any term not exceeding ten years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term not less than two years, with or without hard labor, and with or without solitary confinement."

Simple larceny at common law is what we understand by the common expression of "theft" or "stealing." It is limited to things personal, as goods and chattels, as opposed to things real, as lands and tenements. Larceny is the wrongful or fraudulent taking and carrying away or removing of the personal goods or chattels of another from any place with a *felonious intent* to convert them to the taker's own use and make them permanently his own property without the consent of the owner. The word "feloniously" in this connection may be explained to mean that there is no color of right to excuse the act, and the word "intent" to mean a design to deprive the owner not temporarily, but permanently of his own property. With this definition of larceny coupled with your own common sense knowledge of the offence, I do not think you will have any difficulty in dealing with the cases which will be brought before you.

The only remaining offence on the calendar is *infanticide*. This crime may be defined, the killing of a child after it is born.

In every case in which an infant is found dead, and becomes the subject of judicial inquiry, the great questions which present themselves for inquiry are:

(1) What is the age of the child?
(2) Was the child born alive?
(3) If born alive, how long had it lived?
(4) If born alive by what means did it die?

If it be established in evidence that its death was caused by violence, it is then to be ascertained who caused the violence and by what means it was effected. If suspicion fall upon the mother it is to be determined whether at or about the time of the occurrence she has been delivered of a child, and whether the signs of the delivery as to time and circumstances correspond with the appearances developed in the child.

In the course of criminal justice the scientific tests, and the evidence applicable to a solution of the foregoing questions, have undergone the most searching analysis, and have been reduced to well settled and defined rules, but a critical or even a cursory examination of them would carry me beyond the limits within which I must confine myself. I may say, however, that intentional neglect in tying the umbilical cord; keeping from the child the nourishment necessary to sustain life; exposing the child to the action of cold; the infliction of any injury or violence whereby life has been extinguished, is in law murder. But where the evidence will not go the length of proving a capital felony by any of these or other means it may be and often is sufficient to establish the less offence of misdemeanor, that is, of concealing or endeavoring to conceal the birth of a child. It may be that the case which you will have to consider may fall within the category of the less offence. This you will be able to determine when all the evidence is before you. I may remark that on the trial of an indictment for a capital felony of this kind the jury may acquit the prisoner of the felony, and find her guilty of the misdemeanor.

You are not limited to the cases I have mentioned to you from the calendar. Other cases may come in while the Court is sitting, and others may be brought before you *de novo*, in respect of which no preliminary proceedings before a justice of the peace may have taken place. Into these latter cases, if there shall be any such, you are just as much bound to make inquiry and thereon to make presentment, as in those cases to which I have especially referred.

Before you close your labors you will make an inspection and examination of the jail and its management and the condition of the persons confined in it, and present to the Court the result with such observations as such inspection and examination may suggest.

It may not be amiss to congratulate you upon the solid evidences around us of the growing developments and of the prosperity of our Province. Notwithstanding the discouragements caused by unpropitious weather at seed time, the season has closed with an abundant harvest. The hidden wealth of Manitoba consists in her prolific soil, from which our permanent riches must be drawn. Ours is emphatically an agricultural land. To its cereal productions, and the cattle grazing on its expansive natural pastures must we look for our wealth. Hence the importance, in so far as it is possible, of making every quarter-section the homestead of an actual owner and occupant. During the past season, although in the forepart thereof, in consequence of the incessant rains, an unusual and extraordinary occurrence, the enthusiasm of many was repressed, yet a large addition has been made to the number of the actual occupants of the soil; and it is most gratifying to know that at last the Government at Ottawa have in earnest set about the distribution of the 1,400,000 acres, half-breed reservation, and that these, the finest lands in the Province, will in small portions soon be in the hands of actual settlers, and thereby Winnipeg, instead of being in the midst of a desert and wilderness, will be the centre of, and be surrounded by a populous agricultural community. For this and other ameliorating measures emanating from the Department of the Interior, this Province owes a lasting debt of gratitude to the honorable gentleman who now so ably fills that office.

We all must feel highly gratified at the visit of two members of the Ottawa Cabinet to this distant portion of the Dominion, the more so as it is impossible, without personal examination, to understand our true position and the vast interests at stake with which the Government at Ottawa have to deal, affecting not only Manitoba and the North-West, but also the whole Dominion of Canada. Three weeks of most active enquiry and examination in all parts of the Province, in respect of the management and conduct of affairs pertaining to the Ottawa Government, and to the character of those charged with these important trusts, cannot fail in producing results most advantageous to the public at large. We deeply regret that the Premier of the Dominion could not have made it possible to have accompanied them. We hope at some future day, not far distant, he will find it possible to pay us a visit, and add to that large stock of information which he already possesses of ourselves and the North-West, and by personal observation verify the high opinion he entertains of the "great lone land."

Above all are we to be thankful for the visit of the Governor-General and Countess of Dufferin. Their visit to the North-West will form one of the brightest pages in the history of Manitoba. If the Earl of Dufferin had returned to England without having made this trip to Manitoba, although he had visited every other Province, he would have left North America without ever having seen the Dominion of Canada, although five years its Governor. We feel proud of the honor he has conferred upon us. We are gratified at the favorable impression the country and its people have produced upon him, and for the free, happy and eloquent strains in which he has given utterance to that impression. The publicity thus given of our country and our incipient civilization in the far West, all over the world, from so distinguished ed and reliable a source must be followed by most beneficial results.

It is said:

"'Tis distance lends enchantment to the view."

This may sometimes be true, as well of men as of the scenic display of nature. In the case of the Earl of Dufferin, however, the proposition does not hold good. He is indeed great at a distance, but when we approach near, he towers up like a mountain in the early dawn; and the nearer we approach him, and the better we know him the greater he appears, and the more we are lost in admiration both at the greatness of his heart, and the splendor of his intellect, impressing one with the truth of Wordsworth's lines:—

"To the solid ground
Of Nature trusts the mind that builds for age;
Convinced that there, there only she can lay
Secure foundations."

His brief sojourn, and that of his truly amiable and gifted Countess among us, has taught us how real greatness and dignified condescension may be so blended as to exhibit in every look and act, the humble and home sympathies of the human heart with the true stamp of nature's nobility. In him and her we all feel that we have been brought nearer the sacred person of Her Majesty, and nearer the Throne of the British Empire. Although in this distant region, we feel that we are more completely within the protection and sheltering folds of that flag which flutters in beauty and triumph on every land and on every sea beneath the whole heaven; and more and more do we feel that our loyalty to the Throne and the Empire is not the offspring of impulse but the child of sober reason and pure devotion.

But I must forbear. Time will not permit me to detain you any longer. I close with the concluding paragraph of the last words of the Governor General on his departure from Manitoba:

"In a world apart, secluded from extraneous influences, nestling at the feet of her majestic mother, Canada dreams her dream and forebodes her destiny—a dream of ever broadening harvests, multiplying towns and villages, and expanding pastures, of constitutional self-government, and a confederated empire; of page after page of honorable history, added as her contribution to the annals of the Mother Country, and to the glories of the British race; of a perpetuation for all time to come upon this continent of that temperate and well balanced system of monarchical government which combines in one mighty whole as the eternal possession of all Englishmen, the brilliant history and traditions of the past, with the freest and most untrammelled liberty of action in the future."

MARCH, 1879. *Charge.*

Mr. Foreman and Gentlemen of the grand jury,—Again, after the lapse of eighteen months, I have the privilege of meeting a grand jury gathered from all parts of the Province to aid and assist the Court in the administration of justice.

Since I had the honor of addressing a grand jury, great changes have taken place, and notable events have transpired in the affairs of the world.

It is with feelings of regret I refer to the expiration of the vice royalty over our Dominion of that eminently distinguished and most deservedly popular nobleman, the Earl of Dufferin, whose administration in Canada has been marked by the most exalted statesmanship, and the influence of whose official career, and social intercourse with the people have tended greatly to the intellectual, moral and social advancement and elevation of all classes, and to cementing more closely this magnificent portion of the empire to the British Throne.

We regret the loss; but we are consoled by the reflection that our loss has been the Empire's gain; in the fact that his integrity of character, mature judgment and brilliant and shining accomplishments have won for him a position at the Court of St. Petersburg—in which will be placed in safe hands the task of dealing with the most delicate and momentuous questions now affecting the Empire—and by the

further reflection that his place in Canada has been more than filled by the Marquis of Lorne, a son of the Duke of Argyll, a nobleman standing at the head of the highest order of nobility in the United Kingdom, in rank, in patriotism, in ability, in liberality of sentiment and ancestral renown. The Marquis of Lorne can point with pride to his ancestral line, running back to William the Conqueror, and thence back "till it is lost in the night of treacherous story," all the way luminous with the light of heroic valor and great deeds, and here and there sparkling with the noble sacrifice of life on the field of battle and on the scaffold, in vindication of constitutional liberty.

"Argyll, the states' whole thunder born to wield,
And shake alike the Senate and the field."

To add to his personal accomplishments and the historic fame of his house, he brings with him his gifted and brilliant marchioness, the daughter of our beloved Queen. We can rejoice in a viceroy deriving his descent from the Bruce of Bannockburn, united with a princess of the noble House of Brunswick, daughter of Victoria, Queen of the United Kingdom of Great Britain and Ireland and Empress of India.

Such marked distinction has never hitherto been conferred upon any dependency of the Empire.

In our own Province a change has been effected by the effusion of time.

If we have not gained, we certainly have not lost, anything.

In our Province a new Administration has been formed, and a new Legislative Assembly has been summoned.

Let us hope that more vigor will characterize the policy and action of the present, than the past governments of the country.

This Province needs at this time energetic governmental action. It must rely on itself. For its local and Provincial improvements it need not look to the Federal Government. Any anticipations founded on such expectations, will, in the future as in the past, prove illusory. The Central Government has as much on its hands already as it can well manage. It must confine its expenditure to objects within its sphere as the Federal Government of Canada. The British North America Act localizes taxation for local and Provincial objects. "The gods help those who help themselves." Manitoba cannot any longer stand still, and Micawber-like, wait for Providence or some other gentleman to turn up.

The proposition has been made, to effect a loan, and with it, upon judicial districts being set off in the western and southern parts of the Province, aid in the erection of judicial district buildings in which to hold the assizes, and construct Provincial public buildings for the use of the Government and Legislature of Manitoba; drain such portions of the country as require draining, and subvent the construction of local and Provincial railways.

I am sure this proposition will meet with the cordial assent and co-operation of every inhabitant of this Province.

These improvements must be undertaken and accomplished or we shall remain for all future time substantially in our present position, and although this proposition, to a certain extent, involves taxation on the present generation, yet the execution of the works indicated will widen the basis of taxation and afford the easy means to ourselves of paying the interest, and by throwing the redemption of the capital on posterity who will reap the greater advantages flowing from these works, and will, accordingly, possess ready facilities for paying off, extending or renewing the loan, to the present generation the burden will be light.

Be not deceived; we must have the public improvements I have mentioned; for their acquisition we must look to ourselves, and we cannot accomplish this end without a loan; a loan cannot be effected without at least laying on taxes to meet the ever-recurring annual interest.

Are you prepared to accept the proposition, with the drainage of the country, the construction of local railways, the setting apart of judicial districts in the west and south, the establishment of Assize towns therein, and the extension of the Court

of Assize thereto, and the erection of necessary judicial buildings in those judicial districts, and public Provincial buildings for the Province in Winnipeg?

It is for you, through your Legislative Assembly to answer; and on that answer hang issues weighty and momentous to the future of this country.

The country is promised the Consolidated Statutes of Manitoba in due time. It is a heavy work, and its accomplishment will necessarily entail the expenditure of considerable labor, time and money.

It cannot be denied that the Statute law of Manitoba is in a rather confused, uncertain and unsatisfactory state. Like all free countries in the West, we have had for its quality too large a quantity of legislation.

Possessing as our Province does, the body of the common law and the Statute law of England as they stood and were in England on the 15th of July, 1870, legislation, in respect of the jurisdiction and constitution of our Courts and of property and civil rights in general, inasmuch as it has to be engrafted on the system of laws we already have in force, requires great circumspection and deliberation and a clear head and the ready hand of a skilled and trained legislator.

I am sorry to say that there are not a few Acts to be found on the Statute book which do not exhibit the characteristics of the careful and learned legislator. This is the more surprising as one branch of the Legislature, during the time most of the exceptionable Acts were passed, was not unfrequently reminding us that he was a lawyer, and once held the high position of Chief Justice of Manitoba.

It is to be hoped that the Commissioners to whom has been and shall be committed the duty of revising and consolidating the Statutes, will be able, while retaining the aim and intendment of the several Acts to present them in such a form that Her Majesty's subjects may have no difficulty in ascertaining what Acts are in force and the several enactments relating to the same subject. More than this, the Commissioners have not power or authority to attempt. Where this will not remedy the evil of hasty or inconsiderate legislation, the mischief must be remitted to the Legislature which alone has the corrective and reformatory power.

My long experience in Legislative Assemblies has taught me the difficulty that the leader of a Government has to contend with in respect of imperfect legislation.

Every enterprising and ambitious member is desirous of courting notoriety by introducing and passing some measure, whether it fits in the existing framework of the laws or not, whether it is really required by the exigencies of the country or not, whether the ground it undertakes to occupy is already possessed and completely covered by the Common law or Statute law or not, it is to him a matter of supreme indifference. His aim is advertisement at the public expense, and this being accomplished, his end is achieved; but the Statute book is disfigured: the law, which before was certain, becomes ambiguous, and the administration of justice is embarrassed.

If the pragmatical innovator be a supporter of the Government he becomes a perplexing problem for his leader to deal with; and not unfrequently the issue is abnormal legislation. If an ill-advised Act has found its way on the Statute book, the Government have retained a supporter.

From this and other causes the Statute book of this Province, it must be confessed, has been incumbered by many Acts—some impracticable, some already obsolete and others literally copied from the Statutes of the older Provinces are not adapted to the circumstances and the condition of this Province, and are a quarter of century in advance of time, or are exploded and obsolete in the Province whence they are derived.

Too much legislation is worse than no legislation. A man may be physicked to death. A country may be legislated to death.

Experience of the past, consideration of the present and forecast of the future, I sincerely hope may, in this respect teach the lesson that wisdom inculcates—that legislation is the noblest work in which man can be engaged, and in its execution every member of the House should bring to bear upon the work, patriotism, disinterestedness, impartiality, an absence of all partizanship, and the best intellectual

powers of which he is possessed. If this rule is acted upon, there will be less cause or complaint in the future than in the past.

My observations have more immediate reference to Statutes relating to property and civil rights. Here is a vast and complicated system of laws, the resultant of the experience and the wisdom of ages. This system, as I have already remarked, as it was and stood in England at the formation of our country into a Province, except as it has since been changed or modified by our own legislation, we possess and enjoy. Too much caution cannot be exercised in making invasions on this system and body of laws. The common law, and indeed every enactment declaratory of the common law, and supplementary thereto, or in amendment or enlargement thereof, rests upon the basis of correct principle, the severe and necessary deduction of the relation of things—not on mere will, conceit, or intellectual caprice. All law in this direction, should command what is right and prohibit what is wrong—define injuries and apply adequate remedies, and assign reasonable punishments—provide for the introduction and accomplishment of what is useful and expedient.

Acting upon these suggestions, but little apprehension need be entertained that legislation will deform the symmetrical system of laws which we already possess, or that our Statute book will be disfigured by abnormal enactments.

Having made these preliminary observations, I will now proceed to your more immediate duties in connection with the Court of Assize; but first permit me to make a remark or two in respect of jurors and jury system.

The jury system in a rude and elementary form, is traced back in England and the Northern continental nations, until its history is lost in the twilight of myth and fable. In the continental nations as they became latinized, the forms and procedure of the Roman civil law superseded trial by jury. In England it always has been, and is now, a component part of the administration of justice. It has been studied and has received the careful consideration of continental jurists for a great many years, without being adopted by any of the continental nations, in the form that it exists in England. Many attempts have been made to introduce it in some modified shape, but it may safely be said that it has not, in its essential Anglo-Saxon feature, met the approval of any people, except those springing from the Anglo-Saxon race.

It is universally adopted in all the Provinces of the Dominion, and, as a rule, in all colonial dependencies of the Empire, where the common law of England is the basis of their jurisprudence, and in the several States of the United States of America. It cannot be denied that the people of these countries, to a larger extent than any of the other nations of the world, enjoy civil and religious liberty and equality of rights, that they are the home of Christianity and civilization—the hope of the human race.

Whatever may have been the influence of the jury system, all must agree in the conclusion, that it has been an important factor in working out these results; for, as are the jurisprudence and administration of justice of a nation, so are the equality of rights, the civil and religious liberty of the people.

In the discussions which have periodically taken place on this subject, I have seen nothing which, in the slightest degree, shakes my strong adherence to the principles of trial by jury.

There is one view of the subject which, to my mind, is conclusive of the whole question. Besides the litigants and their witnesses, we have at every Assizes, in both petit and grand jurors, seventy-four gentlemen of the most considerable substance and intelligence, summoned and attending from all parts of the country. These become not only attentive observers of all that is said and done by the judge and all the officers of the Court, but are themselves active participators in the trial of all causes—a part of the machinery of the administration of justice; they share in its responsibility, and, unconsciously, take upon themselves among all their neighbors the vindication and sanction of the proceedings and judgments of the Court. Hence, in British communities, the decrees, judgments, and process of Courts are enforced by the sanction of public opinion, not by a ubiquitous troop of gensd'armes.

I shall be sorry to see the day when even the grand jury is dispensed with. As a system it may have its imperfections; but the experience of ages teaches that its

errors, if it commit any, are rather attributable to the imperfections of our nature than to the grand jury system. It is an institution which has come down to us through the long corridors of time, hoary with age and consecrated in the hearts of a hundred generations. When I run over the page of judicial history and note the many instances of the bold stand grand jurors have taken between the oppressor and oppressed, between arbitrary power and innocent helplessness, between prejudice and innocence—having regard only to their oath to present all things truly as they come to their knowledge, and to leave no one unpresented through fear, favor or affection, reward or the hope thereof—although cases may be found in which they have made mistakes, yet, I find, on the whole, that they have done so much in the cause of liberty and humanity that, in contemplating their career, "I love to forget the accuracy of a judge in the veneration of a worshipper and the gratitude of a child."

I am happy to be able to inform you that the criminal calendar is not heavy, especially when it is considered that it is the accumulation of six months, and is for the whole Province.

I find there are two cases of shooting with intent, etc., one case of embezzlement, two cases of larceny, one case of aggravated assault, and two cases against returning officers at elections for rejecting nomination papers.

The first two, shooting with intent, are, in my point of view, grave offences; they were, indeed, until recently, capital felonies punishable with death.

In both these cases I pretty well understand the facts. That of Beauchamp has indirectly been before me for judicial investigation. In the trial of Filion and Charbonneau for resisting the officers of the law in the execution of a warrant for the arrest of Turenne, that of McIlroy, having occurred in the office of the Clerk of the County Court within these buildings, and an application for bail having been made to me, was of necessity, in discharge of my duty, carefully enquired into, and I was compelled by authority to refuse bail.

I do not think, it is proper for me, at this stage of the proceedings, to make any further observations on the facts. Were I to do so I might unintentionally mislead you; and in any event you must hear the witnesses under oath and form your own judgment as to the facts. It would be highly improper for you, to be guided, in finding facts, by anything I might say, for I am not a witness on examination before you.

But as to the law, it is my duty to instruct you; and it is your duty to accept and act upon the law as I shall lay it down to you.

A deliberate and premeditated shooting with a gun or pistol at and wounding another with intent to kill him, without legal cause or justifiable provocation, is declared by the law to be a felony and punishable with imprisonment for life. In the light of this rule of law, you will, in both of these cases, examine into the facts. First, did the accused shoot the pistol, and was it charged with powder and a leaden bullet or other destructive missile? Secondly, was the pistol intentionally aimed at, and did the bullet or missile hit and wound the person as charged? Thirdly, was it done deliberately and premeditatedly? And lastly, was there an absence of legal cause or justifiable provocation? If these four questions are answered in the affirmative, the offence is *prima facie* complete, and it is your duty to find a bill for the higher felony and to put the offender on his trial for that offence.

It may be, and is often suggested, in such cases as these, that the offender, at the time he committed the offence, was laboring under temporary insanity. In one sense all such persons are insane; but in a legal sense they are perfectly sane. No such suggestion as this must prevail with you. If, on the trial, the facts establish insanity it is for the Court under the law to deal with the case. Society must be protected from criminal lunatics, as well as from sane lunatics. You must leave the question of sanity and insanity where the law has placed them. If a *prima facie* case is made out by the witnesses for the Crown, it is your duty to find a bill, and to leave questions of insanity or temporary aberration of mind to be set up, disclosed, proved and dealt with on the trial.

But if you find that the accused did not shoot the pistol, loaded and charged as I have mentioned, or that it was not intentionally aimed to do mischief, or that it was not done with some degree of deliberation and premeditation, or that there was under the circumstances legal cause or excusable provocation, the higher felony is not made out, and it may be that no offence at all has been committed, and, in such case, you will find a bill only for shooting with intent to maim, wound or do grievous bodily harm; or, if the facts justify it, you may ignore the bill altogether.

Every homicide is not murder. Killing may be murder, manslaughter, justifiable or excusable homicide.

A case of justifiable homicide is where death results in prevention of a forcible and atrocious crime; as, for instance, if a man attempts to rob or murder another, and be killed in the attempt, the slayer shall be acquitted and discharged.

Excusable homicide is of two kinds: (1) Where a man doing a lawful act, without any intention of hurt, by accident kill another; as, for instance, when a man is working with a hatchet, and the head by accident flies off and kills a person standing by. This is called homicide *per infortunium* or by misadventure. (2) Where a man kills another upon a sudden encounter, merely in his own defence, or in defence of his wife, child, parent, friend or servant, and not from any vindictive feelings: which is termed homicide *se defendendo*. The law protects a person in this species of homide; but good morals and humanity teach that it should never be resorted to, except in the most extreme and provocative cases; and in all cases of this kind as a rule, the slayer is subjected to criminal prosecution, trouble, inconvenience and not unfrequently to great danger, so jealous is the law of human life.

I have made these observations to prepare the way to a statement of the law which may be applicable to the facts and circumstances of one of the charges for shooting with intent, etc.

As a rule *omnia præsumuntur esse rite et solemiter acta donec probetur in contrarium*, and, therefore, it is a general principle of law, that a person acting in a public capacity, as a judge, a justice of the peace, a peace officer, a constable, etc., is such official and duly authorized to act as such. In the case of a constable or peace officer executing a warrant of arrest, he must in some way make known the official capacity in which he acts; and that being done, it must be presumed that he has been duly appointed and authorized to act in the premises. When this has been made known, resistance must not be offered to his making the arrest by any one; but the party whose liberty is interfered with and his friends, if present, must have reasonable notice of the officer's business, or resistance and killing of such officer will amount only to manslaughter. A case is given in the books where a bailiff pushed abruptly and violently into a gentleman's chamber early in the morning in order to arrest him, but did not tell his business, nor use words of arrest, and the party not knowing that the other was an officer, in the first surprise, snatched down a sword which hung in his room, and killed the bailiff: it was ruled to be manslaughter. But it will be otherwise, if the officer and his business be known. These remarks apply with great force where the person charged with the execution of the warrant is a private individual, specially appointed for this particular occasion. To entitle him to the protection of the law, he must be careful, as a preliminary step, in some way, to make known to the person to be arrested or cotemporaneous therewith, and to all his friends and connections then and there present, his official character, the authority under which he acts, in short his business; and having made this known and understood, he may use or repel any force necessary to the execution of the warrant and the performance of his duty.

But, assume that the person charged with the execution of a warrant for arrest for a misdemeanor or some minor offence, is not a constable at all, but merely employed for the occasion, and that there is not the slightest ground for suspecting that the person against whom the warrant is issued—(in this case it should not be a warrant, but simply a summons in the first instance)—is likely to escape or evade the arrest on the warrant, goes at an unreasonable hour in the night to a friend's house where the accused is found to have retired to bed, and without making known who

he is or what is his business, either to the accused or to the friends who were affording him a night's hospitality, attempts forcibly to take him and carry him away, without any explanation whatever, and is forcibly resisted and expelled the house: who, in this case, is, in the eye of the law, a trespasser. If the resistance, under the circumstances, had eventuated in the death of the person having the warrant (for he was not a constable) it certainly would have been only manslaughter—probably excusable homicide.

But what shall we say, if this same person returns at daylight, in the morning, with half-a-dozen irresponsible men, some armed with revolvers, and without any explanation whatever, makes an attack upon the master of the house and attempts to drag him forcibly away, and finally seizes upon an unoffending inmate of the house, it may be, in his and his assistants impetuosity, by mistake, and with great violence and force drag him away to a wagon standing ready to run him off, and, in forcing their victim to the wagon, beating him over the head with a pistol and club, and dragging him by the feet with his face on the frozen hubs of the ground, crying for help. Will any one say that nature, which in this respect is above all law, would not dictate and justify the use of all means at command to repel the invaders of a man's home, which is his castle, and to use such force and such weapons upon the assailants as might effect the rescue and liberation of a friend, although, in accomplishing this, every one of the assailants had been shot dead?

In the case I have supposed, if death had resulted to the assailants, it would, in law, which in this respect follows nature, have been excusable homicide; if death had resulted to the assailed, it would have been murder.

If the facts bring either of the cases of shooting within the rule of law I have laid down, no offence has been committed, and you will find accordingly.

In all such cases as these, the law applicable to the constable, the accused and to all persons present, is just what common sense would dictate, and is so plain that "a way-faring man though a fool need not err therein."

I shall next speak of the two cases of larceny.

I know nothing of the facts of either of these cases. I shall, therefore, as the offence is but too frequent for any of you not to have a general knowledge of its characteristics, content myself with a definition of the offence and leave you to apply the law, as I shall state it, to the facts. Larceny is the wrongful or fraudulent taking of the personal goods of another from any place, with a felonious intent to convert them to the taker's own use, and to make them permanently his own property, without the consent of the owner. In this definition, the word "felonious" means without right or color of right, and the word "intent" to deprive the owner permanently, not temporarily, of his property.

The case of embezzlement will not come before you, a bill having been found at the last Assizes.

The case of aggravated assault is of a serious character. From the depositions taken from the committing justice, it appears to have been long premeditated, and to have been deliberately done. The gentleman upon whom the assault was made, was unsuspecting, and in a state and condition disenabling him to defend himself. The offence was committed openly, in the public street, with a cane or whip. The injury inflicted, according to the deposition of a surgeon, was not inconsiderable. The provocation appears to have been an editorial article in the "Free Press" newspaper.

If the accused in this case was aggrieved, the law afforded him redress. He took the law in his own hands and constituted himself his own judge and avenger. In doing so, he has set the law at defiance, inflicted serious bodily injuries and humiliation on one of Her Majesty's subjects in the Queen's peace and under the protection of Her Majesty and her laws.

You will not take the facts from me, but examine the witnesses for yourselves, and a true presentment make according to the facts.

I make but one observation. We cannot treat such offences as this lightly. If the law fails to protect a man from personal violence, the conclusion is inevitable.

Men will resort to the bludgeon, the slug, the skull-cracker, the bowie-knife, and pistol. The weak will endeavor to put themselves on a footing with the strong. Assaults and counter assaults will follow until society is assimilated to that of our neighbors of the South or to the savages of the plain.

This spirit must, in its inception, be "stamped out." All wrongs must be redressed by the law. For this purpose it is ample in its provisions and irresistible in its power. Those who despise it will find it to be their master in the end.

The last cases are misdemeanors. The charge is for wilfully contravening the Election Act, in unlawfully rejecting nomination papers at St. Charles and St. Agathe.

This is a question of great public importance. The returning officers at elections are necessarily clothed with large ministerial powers. They may, in the unlawful exercise of these powers, disfranchise a whole electoral division, by wrongfully rejecting all the nomination papers except that of a favorite candidate, and then, by declaring him elected by acclamination deprive the electors of expressing the voice of freemen at the polls, and sap the very foundations of free institutions.

In the case of Mr. Adshead, the returning officer for St. Charles, in an election petition tried before me, charging an improper rejection of nomination papers, and the return of Mr. Murray by acclamation, I examined carefully the facts, and I felt it my duty to order him to be held to bail to take his trial. In discharge of a solemn public duty, I must say, that I was unable to find, in the evidence, a shade of a shadow of the ground for the action of this returning officer, in rejecting the nomination papers of Mr. M'Phillips and Mr. M'Millen except that he might return Mr. Murray by acclamation.

The evidence shows that Mr. Murray was present, counselling the returning officer to reject the other nominations and to declare him elected—asserting that his nomination paper was the only one fulfilling all the necessary requirements of the Statute—thus in law rendering himself a principal in the offence.

If the evidence shall satisfy you as it has me, it will be your duty to return a true bill against both Mr. Adshead and Mr. Murray. But this is a matter exclusively within your Province, and I have every confidence it will receive appropriate consideration and action.

In the case of Mr. Jos. Turenne, I find from the papers that he is held to bail to answer a charge of perjury. I do not think this charge will lie. The returning officer before he enters upon the discharge of his duties takes an oath of office—"that he is qualified according to law to act as returning officer for the electoral division for which he has been appointed, and that he will act faithfully in that capacity without partiality, fear, favor or affection." Now, in taking this oath did he at that time and on taking that oath commit wilful and corrupt perjury? Perjury, as a legal offence, is wilfully swearing to something as true at the time, which the party knows to be untrue. It must be something false in fact at the time of taking of the oath. This oath does not contain any allegations of fact upon which perjury can be assigned. It is an official oath, and is no doubt binding in *foro conscientiæ*, and on such oaths there may be moral perjury; but it is beyond the power or scope of legal tribunals to take cognizance of the offence.

It was on a warrant issued by Mr. Wyld, charging this offence on this oath, and therefore void on its very face, that all the difficulty at St. Agathe took its rise. I am afraid that in an action against the magistrate and all persons acting under this warrant, the warrant itself would afford no protection. I think it was void as charging no legal offence.

No indictment for this charge will, I fancy, be laid before you. If there shall be, it will be your duty to ignore it.

But there is an offence of which it is alleged that Mr. Turenne is guilty, and which was the occasion of all the troubles and scandal that subsequently occurred at Ste. Agathe, and which, although serious, and in some respects inhuman and unmanly, were providentially attended with no fatal results, although two gentlemen were seriously wounded with pistol shots. It is alleged that he, as returning officer, on the day of nomination received the nomination papers and money mentioned in the

Statute, nominating Mr. Klyne and Mr. Grant as candidates, and also the nomination paper and money nominating Mr. Taillefer. To none of the papers or moneys did he raise any objections till after the time of nomination had expired. He then pronounced the nomination of Mr. Taillefer to be all right, but he rejected the nomination papers of Klyne and Grant—one because an affidavit was sworn to before Mr. Mulvey, as a justice of the peace, whose name he did not find on a list of the justices of the peace which had been furnished him by the Clerk of the Executive Council, the other because the money which had been paid to him and which he had received as money, was not in gold or Dominion notes, and he thereupon declared Mr. Taillefer duly elected by acclamation, and made his return accordingly to the Clerk of the Executive Council.

At this there was, very naturally, a burst of indignation. Hence the unfortunate events to which I have referred.

Now you must understand that I, of my own knowledge nor otherwise, except from current rumor, know anything of the facts. These you will have to ascertain from witnesses whom you will examine. If the facts are in substance such as have been reported, there was a gross and high-handed violation of the sacred right of franchise and of the liberties of the people.

I have given you the foregoing narrative to lay the ground work of one or two directions in point of law:

(1.) If the affidavit to the nomination paper purported to be sworn before Mr. Mulvey, describing himself as a justice of the peace, the law obliged him to presume that Mr. Mulvey was what he professed to be, and it is no justification for him to say that he did not find Mr. Mulvey's name on the list of justices of the peace furnished him by the Clerk of the Executive Council. It was no part of the duties of the Clerk of the Executive Council to furnish such list or of the returning officer to pay any attention to it. The returning officer's duties are prescribed by an Act of the Legislature, not by the caprice of the Clerk of the Legislative Council, nor by that of the Lieutenant-Governor in Council.

In respect to this question as to Mr. Mulvey being a justice of the peace, it is enough to say that he signed his name as such, and the returning officer was bound to accept the fact, notwithstanding any list of justices of the peace that may have been delivered to him; for it falls directly within the maxim I have already mentioned:—*Omnia præsumuntur esse rite et solemiter acta donec probetur in contrarium.*

(2.) The objection that the money was not gold or Dominion notes is altogether untenable. It has no warrant or foundation in the Statute or in the reason or nature of things. The $25 mentioned in the Statute is like any other money to be paid to the Government. It is within the power of the returning officer to demand gold or Dominion notes; but he must do so at the time he receives the money. He cannot receive current bank bills and make no objection to the currency, and wait until after the time for nominations expires, and then raise the objection. His reception of the money concludes him. It is superfluous to say, that if the returning officer, after having received the money without objection, and saying nothing till after the time for nominations expires, then rejects the nomination on the ground that the money is not gold or Dominion notes, he commits a flagrant violation of the law; and I direct you accordingly.

How this notion about this particular money being required to be paid in gold or Dominion notes took its rise, is to me incomprehensible. It could not have originated with the Government for it has not put it in the Statute, and it has not certainly divorced itself of common sense. As well might it say that the law stamps and licenses shall be paid for in gold or Dominion notes. It might go further; it might say that Canada is to pay the subsidy in gold instead of by cheque on the Merchant's Bank; and you, gentlemen, with just as much propriety, might demand from the Government payment of your indemnity in gold. Certainly all the members of the Legislative Assembly must each be paid their $300 indemnity in gold! The thing is ridiculous. "It was a trap set by knaves to catch fools in." Let them see to it that the fowler is not caught in his own snares.

If you shall find that these are the only excuses that are disclosed in the evidence you shall take on this charge, it will be your duty to find a true Bill without any hesitation. Both returning officers and the Government which appoints and instructs them must be taught that they, like the rest of Her Majesty's subjects, are not above but subject to the law. The very existence and continuance of representative institutions are involved in the issue.

And now, gentlemen, I leave you to the performance of the work before you.

To you, in a large measure, is committed the sacred trust of laying the foundations and of commencing the superstructure of the temple of justice in the North-West. Let the foundations be deep and strong, and let the superstructure rise, in harmonious symmetry and beautiful proportions, till its lofty dome is lost in the skies. Let the stream of justice flow in tranquil current, pellucid and without a stain, from the Rocky Mountains to the Lake of the Woods.

It is by these means alone that the frame work of a society, enfolding millions within its embrace, can be built up and knit together in the expansive prairies of which we are as yet only on the threshold.

We are no inconsiderable portion of a stupendous Empire, which, I believe, under Providence, is destined to work out the political regeneration of mankind.

At this moment the population of the British Empire is 234,750,000, very nearly double that of the Roman Empire in its palmiest days; her territorial area is 7,750,000 square miles, almost five times that under the jurisdiction of the Eternal City reposing in beauty and equanamity on its seven hills, in the noon of its greatness and the ubiquity of its power; and the thunder of her navy and the sails of her mercantile marine are heard upon and whiten every sea and every ocean under the whole heaven.

A retrospect of the past and contemplation of the present, and a prospect of the future, show no limits to her jurisdiction or time to the duration of her domain.

Providence seems to say:—

"*His ego nec metas rerum nec tempora porta Imperium sine fine dedi.*"

Her system of jurisprudence and righteous and pure administration of justice, diffused through and interwoven in every branch of her civil polity, have done more in the expansion, consolidation, maintenance and the perpetuation of her power and her sovereignty than her fleets and her armies.

May it never be said that Manitoba is behind any other portion of Her Majesty's dominions in these elements necessary to a nation's prosperity and happiness, to a nation's true greatness.

The charge was then read in French.

The grand jury retired, and the Court then took up some civil business, report of which will appear hereafter.

The Court then adjourned till to-morrow.

OCTOBER, 1879.

The Chief Justice delivered the following charge to the grand jury.

Mr. Foreman and gentlemen,—The grand jury system is an old one, a system peculiar to the English nation. In so far as I know, it has had an existence in the form in which it appears in the British nation, in no other nation in the world. Its origin carries us back to the night of treacherous story, it is lost in the depths of the twilight of history. The influence which the grand jury have exerted in times past in the English nation—that nation which occupies the foremost ground in civil and religious liberty of the nations of the earth—has been, indeed, great. At the present time, of course, having fought the great battle of human liberty, and the efforts of the people having been crowned with success, we are, perhaps, apt to undervalue this grand jury system. The time may come, however,—even in this land—when it will be of great potency in advancing the liberties of the people. There has been, I observe, for some time past an impression prevailing in the legislature of this country that it would be well to dispense altogether with the grand jury system.

It is claimed that an officer of the law may be appointed by the government to review the criminal charges that come before the Court, and if in his judgment a person ought to be put on trial, such trial ought thereupon to take place. There are, apparently, advantages in this system. It is less cumbersome, and attended with less expense. But you must bear in mind also that it would place a most tremendous power in the hands of the executive. I am sorry to say that experience teaches us in this country that the confidence reposed in that body is often misapplied. In leaving the matter with the grand jury, it was left in the hands of a body fresh from the people and responsible to them for its acts—a body the least exposed to any influence except such as is in the right direction—affording thereby greater security to the public making the punishment of crime much more of a certainty than would be the case under the proposed change. In this country, the revenue of which is small, the expense attendant on the administration of criminal justice is, necessarily, considerable. The vicious practice authorized in a former day, of indemnifying jurors to a large extent than was known in any other part of Her Majesty's Dominions, forced on the Legislature the consideration of this question respecting grand jurors, and though they did not venture to do away with them altogether, a change was agitated in the interests of economy, and, without interfering with the efficiency of the grand jury, as they supposed, the number of the body was reduced from 24 to 15, and the petit jury from 48 to 36. As to the petit jury, there can, I apprehend, be no difficulty as to the number fixed on, for if we fail, we can call the tales from the body of the Court. That we cannot do with the grand jury. The experiment thus made is one which, in my judgment, the Legislature were justified in trying, for 48 petit jurors and 24 grand jurors, summoned every Assize, caused a drain of $144 per day. If you add to that the time lost—the mileage at 10 cents per mile each way from all parts of the Province—you will have an enormous sum expended on the grand jury system each sitting of the Court. Now, the law assumes that the grand jury are gentlemen—men of substance and consideration in the country. That has always been the assumption of the law, and, I am happy to add, that, as a rule, the assumption of the law has been correct. In England the grand jury are never paid. That is an old country, with its aristocracy, middle and lower classes. The grand jury are taken from the middle and upper classes, and that may account for the fact that the grand jury in England would feel insulted were anything offered them by their attendance at Court, and the part they take in the administration of justice.

There is another subject connected with this, and that is the payment of criminal witnesses. Unless that question be handled with a good deal of wisdom, the consequences will be that the indemnity will have to be done away with altogether. How in the world two dollars a day for witnesses' fees, besides mileage, ever entered any body's head to be a reasonable allowance, under the circumstances of this country, it is impossible for me to conceive. In my own Province, which is much older, of course, than this country, and much more wealthy, until quite a recent period, the past four or five years, criminal witnesses were never paid anything. I do not think they are paid at the present day, except in cases where they need it, through being unable to bear their own expenses in attending Court. At the present time, jurors are paid in Ontario one dollar a day, and criminal witnesses (while attending the Court of Oyer and Terminer only)—not on preliminary examination before magistrates—are also paid one dollar a day. In some of the other Provinces they are paid far less. Last Session the Legislature passed an Act relating to fees of certain officers, reducing the indemnity to jurors to one dollar and fifty cents per day for those residing outside Winnipeg, and one dollar per day in the case of those living in the city. Criminal witnesses attending the High Court of Oyer and Terminer, and residing outside the city, are also paid one dollar and fifty cents a day—those living within the city, one dollar. I regret very much, and I am satisfied that every patriotic and reasonable person regrets with me, that the Legislature did not put these payments on a proper basis throughout. Jurors and witnesses might be paid one uniform sum, say one dollar per day, which would, in most cases, at all events

defray their expenses, so that they would not be out of pocket. The fact must be borne in mind, which the Legislature seems to have lost sight of, that grand and petit jurors and criminal witnesses are part of the community connected with the administration of justice. In attending the Court, and discharging their duty, they are only serving their own interests, and that of the rest of the community. And, in turn, these sacrifices on the part of the people are borne by one and another, until in this way the whole community become contributors to the peace, order and good government of society. While on this subject I may state, as the Statutes are not generally known yet, that last Session some Acts were passed bearing on the administration of justice, to which I think it my duty to call the attention of this country, through the grand jury. I notice first—and its importance you will be able to appreciate—an Act containing schedule of fees, which justices of the peace are authorized to take in cases coming before them. Some difficulty has been experienced owing to justices of the peace not knowing what fees they might take, and bitter complaints have been lately made by persons that exorbitant fees have been charged. This Act contains two schedules of fees. No justice of the peace is authorized by law to make any charge or take any fees in which the law gives them the power of summarily disposing of the case; the cases above the degree of misdemeanor, or in cases that cannot be summarily brought before them. Magistrates are not allowed to charge any fees whatever in cases of felony, or even in misdemeanor, which they cannot summarily dispose of. They are the appointees of Her Majesty to assist her in the administration of criminal justice in the community, and if they are not disposed to exercise the duties of that office on the specified conditions, they should never have accepted it. In all instances the schedule of fees stipulates what may be charged. By this they must be governed—in no case going beyond it. I have been informed—though I have no personal knowledge of it—that for taking an affidavit one magistrate made a charge of $2. Now, I desire to warn magistrates in this connection on two points:—First, that if they presume to take fees, not authorized by this Act, they are liable to a penalty of $80. Secondly, that they are bound to send to the clerk of the peace or the Provincial Secretary, by the 1st of March and 1st of October in each year, a statement of all that they have done in regard to summary convictions. For default in this particular, they are also liable to a fine of $80. And, I may add, that if the Attorney-General does his duty he can see that these returns are made. In cases of default, he can see that these magistrates are prosecuted.

Another Act, passed last Session, relates to the fees of counsel and other officers in the administration of criminal justice and other proceedings. To this I wish to refer. It provides, generally, that the judges of the Court of Queen's Bench shall determine the fees that counsel or attorneys may be entitled to take in all criminal proceedings. This general provision is made for the protection of the public. We have, you know, a general prayer that the Lord would have mercy on all prisoners and captives. If a man is a prisoner, the Legislature supposes that a certain protection should be thrown around him, notwithstanding his being a prisoner; and counsel or attorneys should not, under the disadvantageous circumstances under which a prisoner is placed, be at liberty to make a bargain with him to his manifest disadvantage—extorting from him fees of $100 or perhaps $200. After that general provision, the Act sets forth a table of fees for sheriffs, coroners and constables, for services in any criminal cases, including fees in cases of distress for rent or otherwise. Hereafter, then, no constable need be at a loss to know precisely what he is entitled to by law for any services he may render; and in cases of distress in respect to which most exorbitant charges, have to my knowledge, been made—the fees are now defined by Statute, and there can be no mistake about them. A penalty of $40 has been attached to the violation of the provisions of this Act.

I would desire also to call your attention to an important Act of last Session—the County Courts Act. Ever since the Province was organized there has been no County Court Act to direct the County Court clerks, or even the judges in the administration of law in that Court. I venture to say that the Act, as it now stands,

is unrivalled in the history of the legislation of the world—not because of its originality, but because it contains a collection of the English Acts of those of other Provinces, which experience has shown to be in the highest wisdom. The Court has jurisdiction to the extent of $250 in cases of debt, and is so plain and simple in its forms, that every man of ordinary understanding is able to manage his own business under it, as well as if he had the whole bar of Winnipeg at his back. The whole aim of all its provisions is a vigorous activity in reaching the ends of justice and in the collection of honest debts without any unnecessary harshness to the debtor. It is emphatically a poor man's court. Any person may go into it and conduct his own business without exposing himself to the taunt of having "a fool for a client." While I make these observation in regard to this Court, I wish to guard myself against intending to convey the idea that the profession of the law can be dispensed with. The gentlemen of that profession are invaluable in managing the affairs and business necessarily growing out of the complications of civil society; but I wish it to be understood that their sphere of activity and usefulness is not in the County Court. At the same time, there cannot be the slightest objection that the Court should receive all the advantages and assistance which it may be able to receive from these gentlemen. Every business man should have a copy of this County Court Act lying on his desk, and acting on this idea, the Government have, I believe, published it in a separate form, so that it can be obtained for a few cents. The success of this Act, let me explain, depends on the clerks and bailiffs. As to the clerks in the several Courts with which I am acquainted, I must say that they are really very efficient. I wish I could say as much for the bailiffs, for without proper bailiffs the Court will be a failure. This responsibility, I may tell you, does not rest with the judges, but altogether with the Government, and I make these observations to call the attention of the Goverment to the importance of this measure. While on this point I may say that it is not creditable to the administration of justice in this Province, that we should have to depend on our present class of bailiffs in the important division of Winnipeg and County of Selkirk. At the last term of the County Court there were a large number of writs remained unserved, and one of the bailiffs appointed by the Government, I was informed, had not been in the office for three months. On Court day he came in with two or three of the writs so dirty and nearly worn out, that one could hardly read them. These he threw down and then went away.

Another Act of last Session of consequence to the public is the Common School Act. From 1870 to 1879 the Legislature in its wisdom has been all the time legislating with reference to the common schools, with as a result a compilation of laws which all the lawyers in Christendom would find it a severe task to wade through in order to find what the Legislature really meant and what the law was. In the cursory examination which I have been able to give the present Act, I find in it several clauses which it does not seem possible to reconcile the one with the other, or with the whole Act, but even as it is, it is of incalculable advantage to those having most occasion to use it.

I shall only refer to one other subject of legislation and that is the Act respecting municipal incorporation. For seven or eight years past the Legislature has been heaping up legislation on this subject. Thousands and tens of thousands of dollars have been expended on these Municipal Acts—the result of all these efforts being a very conspicuous failure. Generally these Acts have been copies of Statutes passed in other Provinces and indiscriminately thrown before the Legislature here. The key-stone of the arch is wanting in the structure, the enactsments having been made voluntary. The real gist of municipal institutions should be compulsory organization. Not having adopted that principal years ago, you have no municipal institutions, notwithstanding all your labor and expense. What should be done in a Province with so sparely-settled a population was to have taken a district organized into a municipality, and when that was completely working, then run down into the minor portions of the Province and organize them. The course was merely such an attempt as one would make who tried to make a sugar loaf stand on the small end.

The Legislature will find itself forced to adopt the simple machinery of compulsory organization of municipalities in divisions or counties.

I will now speak of the business more immediately before you. The criminal calendar of this Assize is, I am happy to say, very light, embracing 12 cases in all (which he specified.) This criminal calendar of the whole Province for six months is so light that it would compare most favorably even with any of the more populous counties of Ontario. I have no doubt that one cause among others producing this state of affairs is the firm and steady course of justice in convicting and punishing the guilty. The certainty of detection, conviction and punishment are strong deterrents to the commission of crime, and in one sense all punishment is directed to this end. The duty we owe to justice as well as to society, is to investigate calmly and dispassionately every case of crime brought before us, convict wherever the evidence warrants conviction, and award the punishment affixed to the offence by the law. Of course I know nothing of the evidence which will be produced before you in support of the several charges. I have to say to you generally, that the evidence must be such as to make out a *prima facie case* of guilt. In other words, if you cannot reconcile the whole evidence with the innocence of the accused, but on the contrary, can reconcile it with his guilt, you must find a bill against him and *vice versa*.

The charge of larceny is perhaps better conceived by the mind than expressed in words. It may be defined to be the wrongfully or fraudulently taking and carrying away the goods of another with felonious intent and converting them to the taker's own use without the consent of the owner. There can be no larceny only of goods, and the guilt of the offence you will observe consists in the felonious intent. I am sorry to say it is such a common offence that you may have difficulty in determining whether the offences charged under this head fall within the category of this crime. The term robbery properly means the stealing from the person, usually accompanied with more or less violence. It is properly made by the Statute a very grave offence. The charge of robbery in the calendar before me is, I am informed, the taking of a large sum of money, effected by breaking into a dwelling and breaking open the trunk which contained the money. This would be burglary and stealing. You will probably have no doubt the offence was committed by somebody. Your difficulty will be to determine who did it. I am informed that there is no direct evidence to fasten the guilt on the accused, but that there is strong circumstantial evidence. Having directed the jury in this matter, His Lordship observed that public justice, the sacred right of property of every individual in the community made it imperative on all concerned to make the most searching investigation into the charge. I have, continued His Lordship, every confidence that you will faithfully discharge the duty the law casts on you in this respect.

The ground of the charge of false pretences is, in plain English, a lie. To constitute this offence there must be an allegation that a fact is in existence which does not exist, and a person who, induced by this allegation, parts with a chattel, money or valuable security. The obtaining the property must be the result of false pretences. Having explained the crime more fully, His Lordship went on to say that the policy of the law is to punish, as a crime, all fraud—to go as far as it safely can in that direction. It is only stopped by the line which separates the domain of those moral obligations, relegated to the court of conscience, from those cognizable by a Court of justice. While the law bars falsehood, it does not assume to deal with it as a moral offence. It only notices it when thereby a fraud is perpetrated.

There is a charge on the calendar of railroad obstruction. That has, with the highest wisdom, been made a statutory offence; for by obstructing a railroad, human life, to a large extent, is jeopardized, and property exposed to destruction.

There is a charge of assault on the calendar. At the last Assizes the grand jury, in making their final presentation, undertook to give an opinion in reference to a case of assault, in which they found a bill, and expressed surprise that the magistrates had not disposed of it. This was a piece of impudence on the part of the grand jury, for every man who is assaulted in his body has a right to bring the offence before the highest court in the land. I do not mean to say that magistrates

may not dispose of these matters summarily, but I say that to do so they must have the consent of the complainant. Having explained how it would be if this right of appeal to the higher Court were not allowed, His Lordship noticed that a charge of forcible entry was on the calendar. In a very old Statute, continued the Chief Justice, passed in England in the time of Richard, I think, this is made a most aggravated offence in the eye of the law, and very properly so. Although the person thus taking forcible possession may have equal right to possession—though it may be his own land—yet if he takes possession forcibly—with a high hand and a breach of the peace—he is liable to indictment. Without such a law party would be arrayed against party, the use of firearms would be invoked, resulting in scenes of bloodshed, without any termination of the difficulty. Having further explained the case, His Lordship said: Once for all the people of this country must be taught that whatever may be their sense of right or wrong, they cannot be allowed to vindicate their feelings by violence. If the evidence convinces you of the allegations in this case, you have but one duty to perform, and that is to find a true bill against every person that was present, and who, by his presence, words or acts assisted or countenanced the forcible expulsion of Hyde from his house and land. The security of families, life and property, and the peace of society, depend on you and me speaking out and acting firmly in such cases as this. The right of either of the rival claimants to the lands in dispute has nothing on earth to do with the question. These rights might have been settled in the Courts, or in other authorized modes. The idea of undertaking to settle them by getting together a lot of persons, attacking a man's house, tearing it down, endangering the lives of himself and family, and dragging them out of doors—such a course of wild, lawless procedure is one of the most terrible things that can happen in a community, and it is just one of those things of which the law must mark its stern disapprobation in order to deter others. I make these observations for the purpose of disseminating, as far as I am able, a knowledge of the policy of the law respecting the protection of life and property.

There is also on the calendar a charge of escaping from the penitentiary. It is not necessary for me to make any observations with reference to the accused, Daniels, as his reputation is pretty well established, as far as it goes. However, you will bear in mind that you are not to be prejudiced in any of these charges. It is for you to be satisfied, beyond reasonable doubt, before bringing in a bill against any of the accused.

Another offence, termed "Bestiality," appears on the calendar, in which, for the sake of the accused, for the sake of human nature, I hope the charge will be proved baseless.

There is also a charge of forgery to be disposed of. Having explained this charge, and given further explanations to the jury respecting the bills to be brought before them, His Lordship dismissed them to their room.

MARCH, 1880.—*Charge:*

Mr. Foreman and Gentlemen of the Grand Jury,—The Court of Assize has again convened for the despatch of the criminal and other business which may be brought before it, and in the disposition of the criminal business, an initiatory and a most important part is, by the constitution of the Court and by the law of the land, assigned to you.

The grand jury is selected from gentlemen of the most considerable substance and intelligence in all parts of the country, and the influence they have always exercised, not only in the manner of the discharge of the important duties directly devolving upon them in Court, but also in the community, out of Court, is one of the chief grounds of the respect and confidence which all classes in British communities have always felt in the administration of British justice. Manitoba is no exception to this rule. Whatever adverse criticism, in other respects, may be made upon Manitoba by the outside world, no one has ventured, and I hope never will have occasion to venture, to call in question its pure administration of justice, as respects its

Juries, its Bar, or its Bench; and as regards our own people, confidence in the impartial administration of justice and as a consequence, respect for its Juries, its Bar and its Bench, and a spirit and feeling of confidence in the conduct and decisions of its Courts lies at the foundation of the prosperity and future growth and greatness of our country. This is not accomplished by the number of cases with which the Courts have to deal, but by the stern, severe and inflexible principles of justice with which the few that are brought before the Courts are disposed of. From the comparatively few of the transactions of life brought before and decided by the Courts, the people take instruction and warning and govern themselves accordingly in the many transactions arising in the complicated and varied business of civilized life. The silent but impressive injunction is *ex uno disce omnes*. The jury system is eminently conducive to the dissemination and propagation among all classes of the community of the general principles of law which govern the relations of men in a social state, and the legal rules and rights applicable to trade, commerce, exchange and the multitudinous transactions of human life.

In the administration of justice, as a rule but little difficulty now exists in the proper application of the rules of law to any given and admitted state of facts. The great difficulty that Courts have to contend with is, the clear and unquestioned state of facts. In many cases the true state of facts depends upon the verbal allegations of witnesses.

When we reflect upon the momentous interests of property, reputation, liberty and even life dependant on human testimony, it may not seem amiss to make an observation or two respecting the foundation of, and the grounds for belief in human testimony. Of course, the ground-work of all evidence is human knowledge; and all that men know is referable to perception and reflection. But the knowledge that we have acquired or shall acquire by our own perception and reflection, is but a small part of the sum that we now possess or shall hereafter acquire. Much of our knowledge is gained from the perception and reflection of others, and will continue to be to the end of our life. In our childhood we believe implicitly almost all that is told us. So great is this natural disposition to confidence and belief in all that is told us, it may properly be termed instructive—a principle implanted in the very nature of man by the Supreme Being. In infancy and early youth we believe everything that is told us; but as we grow older, and learn only from experience and reflection that, of all the things told us, some are not true; and then only do we begin to find out that all that may be told us may not be true, and our former confidence in the testimony of others is weakened; we find in some things we have been deceived; in others, we detect falsehoods; as these go on and multiply upon us, we gradually become more and more distrustful of statements made to us, and learn by "experience" the necessity of testing them by rules. "Confidence," exclaimed Lord Chatham on a memorable occasion, "is a plant of slow growth in an aged bosom;" and it is true that as we advance in years, and as our experience matures, the instinctive proclivity of infancy and youth to rely on testimony is more and more diminished, and more and more controlled and modified, and we are more and more disposed to subject human testimony to the crucial test of experience and reason.

It may, therefore, be stated that the basis of our confidence in evidence rests upon our faith in human testimony, as sanctioned by experience.

Independent of all moral or religious or moral considerations, the natural and instinctive nature of man is to tell the truth; and to believe as true, what is told to him by others: and this natural principle of his nature, however much it may have been outraged, or blunted by experience, clings to him as part of his natural being, through life.

Notwithstanding this natural instinct to tell the truth, supported by the monitions of conscience and his moral nature, and the sanctions of religion, we not unfrequently meet with cases in which a person from passion, self interest or some influence brought to bear upon him, perverts the truth, and thereby dishonors manhood, does violence to his own nature and outrages the great moral law.

Although the English law is severe in its dealing with and punishing the crime of perjury, to the honor and glory of the nation, there is seldom occasion for its invocation. If one national characteristic more than another distinguishes the British people, it is, on all occasions, the outspoken truth. They regard truth as the brightest ornament of a manly character, and would rather have any offence charged against them than the mere imputation of want of veracity. I have no intention, in making this observation, to make the slightest discrimination between the people of British and French origin in this Province. Far from it. If I were to discriminate at all, which I do not, I am not clear, from the information and experience I possess, it would be in favor of the general veraciousness of those of French origin.

However, in this respect, as a whole, there is a vast difference between the British people and the inhabitants of India, the subjects of the Czar of Russia, and of many of the continental nations of Europe—to be accounted for, probably, by their social, religious and political institutions.

Truth and candor, essential in the correct investigation of the true state of facts in courts of justice, is a never failing and never fading ornament of character in every relation of life. It goes to compensate and excuse many other defects. To the professional gentleman it is the *sesame* that opens the ear of the court and inspires confidence in every business man with whom he comes in contact. He may lack showy and shining qualities, but, my word for it, with even moderate abilities, if he really possess and practice, on all occasions, truth and candor with industry, his success is assured—without truth and candor, even with the most brilliant talents, his success is more than doubtful.

The most odious and hateful character of which it is possible to form any conception is that of the common liar; but when the common lie ends in perjury the character becomes too terrible—too horrible even for contemplation, and we strive to close the eye of the mind and shut out the hated and odious vision.

These observations apply to persons in every walk of life.

These remarks have extended to greater length than I intended. I commenced them for the purpose of introducing to your notice some tests to guide you in judging of the credibility of witnesses.

In many cases it is impossible to ascertain with anything like certainty what character the witness deserves for honesty and intelligence, and how far he may be actuated by interested, malignant or other improper motives. On these heads more or less doubts must always exist. A rigid cross-examination is all that is left. In estimating the credibility of a witness, the mode and manner of his giving evidence, and conduct and demeanor while giving it, are of great importance.

The language of truth is that of simplicity, minuteness and ease; that of imposition laboured, cautious and indistinct. The partizan witness will betray over zeal, or studied and laboured indifference, answering without waiting to hear the question, or apparently considering, and answering with great deliberation, or pretending he did not hear or understand the question, taking time to think what answer he shall give; he will pretend not to recollect facts in respect of which he may be contradicted, and will minutely remember others in respect of which he knows he cannot be contradicted; on cross examination he will answer flippantly or evasively; on one question being asked he will give an answer to another; he will, on a question being put, desire to go into an explanatory answer, instead of answering directly, and then, if proper, going into an explanation; he will affect indifference, declare he is telling the truth, and may call upon God to witness his truthfulness and sincerity. All these, or any of them, are indications, more or less conclusive, of insincerity and falsehood. On the other hand, the non-partizan witness, in his testimony, is calm and simple; in his manner there is naturalness, in his narration of facts, unaffected readiness, and appropriate copiousness of detail, as well in one part as another, and a manifest and evident disregard of either the facility or difficulty of vindication or detection.

There are many other tests which might be named, but those I have mentioned may suggest to your good judgment the many incidents, accidents and circumstances

attending the giving of evidence by a witness, which may enable you to judge of its reliability and credibility.

I am happy to inform you that the criminal calendar is very light. On it I find but two cases—one of forcible entry, the other for larceny. These are the only cases on the calendar which have arisen in the Province and been brought before this Court since last Assizes, a period of six months. True, a few, very few, cases have in the interim, been disposed of under the Criminal Speedy Trial Act. Without any exaggeration, we may venture to say that our country is almost free from crime. This is the more surprising considering recent immigrations from all parts of the world, and the mixed and homogeneous character of our population, and the close proximity of extensive public works, upon which are employed a large number of laborers whose headquarters are Winnipeg, and who have no stake in the country, and whose stay is only temporary.

Our almost entire freedom from crime for the three or four years past may be attributable to many causes. I think one may be mentioned as largely contributing to this result—the certain detection, conviction and punishment of every person committing an offence. The law, in its administration, is emphatically a terror to those disposed to do evil, and a protection and defence to the innocent. This conviction has seized and found a lodgment in the mind of all classes, and the result may be seen in the calendar before me. My most ardent hope is that this state of things may long continue.

Forcible entry or detainer is committed by violently taking or keeping possession of lands and tenements with menaces, force and arms, and without the authority of law.

"It has been laid down in the books that, at common law, and prior to the "passing of the Statutes relating to this subject, if a man had right of entry upon "lands or tenements, he was permitted to enter with force and arms, and to retain "his possession by force where his entry was lawful, and that even at this day, he "who is wrongfully dispossessed of his goods may justify the re-taking of them by "force from the wrongdoer, if he refuse to re-deliver them." But the more modern and better opinion is that any forcible entry, with a high hand, is an offence at common law. However this may be at common law, the Statutes which have been passed on the subject clearly make every forcible entry, with force and arms, or violently with a high hand, whether the party making the entry has a legal right to do so or not, unlawful, and give restitution and damages to the party aggrieved. These are old statutes (5 Rich., 2 c. 8; 15 Rich., 2 c. 2, and Henry 6, c. 9 s. 3; 21 Jas., 1 c. 15) but were wisely conceived in view of the peace of society and the prevention of strife and bloodshed, and are just as wise in their provisions and as fitly applicable to the subject-matter to which they relate to-day as they were when passed.

The general effect of these Statutes is that no man shall, by force, take possession of his own land, the right to the possession of which is by law vested in him, if, by so doing he makes a breach of the peace. It makes no difference to whom the right of possession belongs. The recovery of the possession of land must be enforced through the process of the courts of law, it matters not how clear and unquestioned the right of possession may be. Even a tenant overholding against his landlord cannot, by the landlord, be put out by force, and with a high hand.

I know nothing of the facts of the case which will be brought before you. If the evidence satisfies you that that the accused have obtained or attempted to obtain by force and violence possession of land in the actual possession of another, and to expel and put out that other, it will be your duty to find a true bill. The law does not permit any individual thus to assert even his clear right, much less a doubtful or disputed right.

The other case is larceny—a crime unfortunately too frequent, and too well known and understood to require any exposition from me. Larceny at common law may be defined to be—"the wrongful or fraudulent taking and carrying away the personal goods of another, from any place, with a felonious intent to convert them to

the taker's own use, and make them permanently his own property, without the consent of the owner."

There are a variety of criminal acts made larceny by Statute, which at common law, would not be larceny.

Whether the party charged in the calendar is charged for larceny, at common law, or by Statute, I know not. The Attorney-General who has charge of the criminal business on behalf of the Crown will instruct you, if you require any information on the subject.

A clear *prima facie* case should be made out to you before you find a true bill; on such a case being made out it will be your duty to put the accused on his trial.

In all cases before you, you are only to hear the witnesses for the prosecution —not for the defence.

In all cases the witnesses for the prosecution must make out a case free from reasonable doubt; failing this, it will be your duty to ignore the bill.

It will be part of your duty to examine the jail, its condition, and the manner in which it is kept, and the treatment of those in confinement, and you are at liberty to make any observations you may see fit, on the state and condition of the Court House and jail and their management.

It is quite within your province to inspect, examine, and report upon the state, condition and management of the Winnipeg General Hospital. This is a public institution, in which the people of the Province have a deep interest. The advantage to the people of Manitoba, in many points of view, of a superior curative establishment, affording surgical and other medicinal facilities in a more perfect manner than could otherwise be obtained, and the incentive to research thereby placed before the medical profession, and the practice and the experience thereby acquired, are certainly deserving of consideration; besides all this, a grant is annually made for the support of this institution from the public exchequer. This gives you the right to examination and inquisition, and all experience teaches us that periodic inquisitorial visitations of such institutions, have not marred, but rather promoted their efficiency and usefulness.

In making these observations I must not be understood as in any way questioning the excellency of the conduct and management of the Winnipeg General Hospital, on the contrary, in so far as I know, or have any reliable information, it has been most admirably conducted, and has been of great service to many unfortunate persons, and has been, and is, a monument to the considerate charity of the people of Winnipeg and a credit to the whole Province. If it is what its founders intended it should be, and what its present managers represent it now to be, neither its usefulness nor its reputation will be diminished or impaired by the semi-annual visitation of the grand jury of the Province.

Before concluding, it is proper I should call the attention of the country to some of the principal measures passed by the Legislature which has just closed the labors of its first Session.

From the work of the Session, viewed as a whole, I think the country has reason to congratulate itself upon the composition of the Government and the House. Legislatures, like individuals, are to be judged by their acts. "By their works we shall know them." The testimony and experience of all ages informs and teaches us that names, cries, shibboleths and designations of party and faction are "traps set by knaves to catch the fools in." The *experimentum crucis* to which every Government and every Legislature should be subjected, and by which alone their character should be determined, is their "works." Subjected to this severe test, I think the present Legislature is far in advance of any preceding Legislature in this Province, and th at it will not suffer by a comparison with the Legislatures of any of the sister Provinces of the Dominion of Canada.

It cannot be denied that in this Province the order and good government of the country, primarily rests with and must emanate from the people. It is equally a well-settled axiom that in a large measure the establishment and maintenance of schools, the opening, construction and maintenance of roads, and generally all local

works and matters must be remitted to, and undertaken and accomplished by localities, in short must be localized. This has been the conviction of the more intelligent mind of the Province for a number of years; Statute after Statute has been passed with the view of the realization of this idea and conviction, but to no purpose. The expense of even the printing of all this legislation in respect of municipalities which the present Legislature in its first Session has declared worthless has not been inconsiderable. As I mentioned to the grand jury of the last Assizes, the whole scope of the legislation had been misconceived. It proceeded on the principle of the voluntary municipal organization of the primary localities, as townships and parishes, as necessarily preceding that of larger localities, as counties or areas which might form counties containing several wards. I all along pointed out that on this principle of procedure nothing would be accomplished. Still this course of legislation was persisted in, and after the lapse of eight years the result has demonstrated the total failure of all efforts in this direction, But it is said, *experientia docet stultos.*

In the last Session of the Legislature all this rubbish has been swept away, and a plain, concise Act passed, placing municipal organization on a practicable and common sense foundation. The whole Province is divided into twenty-six municipal divisions, and each division into six wards, which are to form the electoral districts from which councillors are to be elected to the general council of the divisions, and failing to make the election the Lieutenant-Governor in Council is to fill the vacancy by appointment by Order in Council. Each Council is to consist of six councillors and a warden. As I understand the Act the warden is to be elected by the vote of the whole division. I cannot say I approve of this feature. I would rather leave the election of the warden to the councillors. This, however, if thought desirable, may be easily changed.

The organization provided by the Act is compulsory. If a council is not chosen and organized by the action of the voters within the division, the Lieutenant-Governor in Council will do it for the voters. There is no escape. Each division must have a municipal council of its own choosing by its voters, or one appointed by the Lieutenant-Governor in Council.

The Act was assented to on the 14th February; it must be put into practical operation within three months from that time. Therefore, within three months from this day we shall have about twenty-six municipal councils sitting in session over the whole Province, deliberating upon the establishment and support of schools, the making of roads and bridges, the drainage of lands, the regulation of fences, ditches and dykes and cognate subjects.

I have no doubt the Act in question will prove a great success, and that the reputation of the gentleman instrumental in its introduction and passing will go down side by side with that of the late Honorable Robert Baldwin, the author and introducer of the municipal system into the late Province of Upper Canada, now the Province of Ontario. The next Act I shall mention is that to interdict the use of intoxicating liquors.

I shall not dwell upon the evils flowing from the use of intoxicating liquors. It has destroyed, is destroying, more lives than war, pestilence and famine. It not only shatters the casket, it destroys the jewel within, it kills beyond the tomb. The slimy trail of the serpent may be traced even over the virgin soil of Manitoba. It not only disrobes its victim of manhood, but demoralizes and brutalizes his whole nature. It casts over the land a dark and sinister shadow, it spreads over the face of the country a dark flood, on the turbid bosom of which float in wild confusion ruined fortunes, wrecked hopes, blasted reputations, bursting sighs and broken hearts.

The interdict Act is a life boat sent to rescue the alcoholic mariner just about to be thrown upon the breakers and engulfed in the awful deep.

The whole scope of the Act may be expressed in a few words: it aims at depriving a man of the ability and power of getting liquor, who has lost the government of himself, by interdicting all who sell liquor, from giving any to him; its direct action in this respect is on the liquor seller, not on the liquor drinker. The means

provided in the Act for accomplishing this object are amplo, the machinery simple, speedy and easily set in motion.

But if the interdict of liquor dealers proves ineffectual, the intendment of the Act to save the inebriate is not to be baffled. In cases where the remedial measures to which I have referred will not avail, humanity has prompted the Legislature to provide for the imprisonment of such at hard labor until their reformation and restoration to a right state of mind are assured.

This Act may do great good. If it only saves one person a year it is no small achievement.

The life and immortality of one man will well repay the gentleman who conceived, formulated and passed into law the provisions of this Statute. In some of its features, in so far as I know, it is entirely original. I wish it success in its efforts for good.

Of the many excellent and progressive measures passed, I can only refer to one or two more.

The Drainage Act is a most important measure. It is, as it seems to me, wise in its policy and perfect in its provisions. All that it needs is money, to carry into effect its provisions, and that is provided for in the Act to authorize the withdrawal of the capital at the credit of the Province with the Government of Canada.

As another evidence of progress, I may mention the Act providing for the holding the Court of Assize at Portage la Prairie.

If the people are only true to themselves, it will not be long till they have an Assize Court in the region of the Pembina Mountains, in that of Morris, and at some point north-west of Portage la Prairie.

The first great impetus to undertakings having for their object the advancement of our people in the race, in internal improvement and consequent prosperity, has been given. A new era is opening up to our contemplation. The spirit of our whole people is awakened. Succeeding sessions of the Legislature will lead in the onward march of events; and the stagnation which has hitherto brooded upon our energies will soon give place to life and activity, and the Legislature of 1880, may well be entitled to say—

Exeginus monumentum ære perennius.

I now dismiss you to your duties.

CHAPTER V.

Observations on the Fifth Paragraph of Mr. Clarke's Petition.

"That the said Hon. E. B. Wood, in his charge to the grand jury for the Province of Manitoba, at the Spring Assizes of 1880, declared that he had no confidence in the oath of any of the French native population of the Province, and as a natural consequence of such a declaration, a large and important class of the population of the Province of Manitoba had lost all confidence in the impartiality of the Chief Justice, and can entertain no hope of fair or impartial justice before him."

The charge in the fifth paragraph is, "that at the Spring Assizes of 1880, I declared that I had no confidence in the oath of any of the French native population of the Province," &c.

Mr. Clarke is as reckless in this as in all his other statements; but, no doubt, he fancied, by boldly stating, in this connection, a wilful falsehood, as in the first paragraph of his petition in respect of Riel, and in the second, in respect of Lepine that he would excite the French members of the House against me, who would never think, in a matter of this kind, of testing the accuracy of the statement by an appeal to the charge to the jury.

In my address to the grand jury, at the Spring Assizes of 1880, which is given in full in my observations on paragraph four of this petition, is the following passage, which is the only one at all referring to the subject:—

"Although the English law is severe in its dealing with and, punishing of, the crime of perjury, to the honor and glory of the nation, there is seldom occasion for its invocation. If one national characteristic more than another distinguishes the British people, it is on all occasions, the outspoken truth. They regard truth as the brightest ornament of a manly character, and would rather have any offence charged against them, than the mere imputation of the want of veracity. I have no intention, in making this observation, to make the slightest discrimination between the people of British and French origin in this Province. Far from it. If I were to discriminate at all, which I do not, I am not clear, from the information and experience I possess, it would not be in favor of the general veraciousness of those of French origin."

Now, what is one to think of any pretended statement of facts by Mr. Clarke, after such an exposure as this?

CHAPTER VI.

Observations on the Sixth Paragraph of Mr. Clarke's Petition.

"That suitors of the Province of Manitoba have lost all confidence in the administration of justice by the said Hon. E. B. Wood, by reason of the evident and notorious partiality of the said Hon. Chief Justice in the exercise of his judicial functions in favor of certain members of the Bar of Manitoba, practising before him, some of such members of the Bar being his own near relatives, a partiality so clearly proved in the eyes of the public, that a large number of litigants abandoned their own attorneys and in self-defence felt compelled to employ said members of the Bar favored by him or retained in addition to their attorneys, admitting openly that they so acted, because the members of the Bar had full empire over the judge, and that he made them gain their cases."

The purport of this paragraph is that I am partial and corrupt in my judgments by reason of my desire to favor some relations who are practising at the Bar; and so notorious is such partiality, that a large number of litigants have abandoned their own attorneys, and have gone to the favored members of the Bar in self-defence.

I have a nephew of some years at the Bar and a son who was, a little over a year ago, called to the Bar, practising law in Winnipeg. I believe they have the reputation of fair practitioners, and I believe they deserve that reputation.

There is no allegation in this paragraph corollated to any fact, incident or occurence by which (unlike in this respect the last two preceding paragraphs) it may be tested. In this case, there being no evidence in the affirmative, for I must, after what has been disclosed, regard Mr. Clarke's declaration of fact as entitled to no weight whatever, the issue is of such a nature that it is impossible for me to prove a negative. I do not forbear to do this on the rule, *ei incumbit probatio qui dicit, non negavit*, but because in the nature of things, it is impossible. If one person who had lost confidence, or one person who had suffered in any way from the cause alleged, or one person of "the large number of litigants who had abandoned their own attorneys and employed the favored attorneys," or the name of one of the persons who are alleged to have "admitted openly that he had so acted because of partiality to the favored attorneys," or one cause in which injustice had been done, had been mentioned, I might, and probably should, be able to expose the untruthfulness and the cruel and contemptible meanness of the whole paragraph. There in court are the evidence, judgments and decisions, in writing. Let Mr. Clarke name the person or the cause, if he can or dare. I will soon dispose of it in the manner I have, and shall yet do, wherever he has connected any person or thing with his malicious and untruthful allegations. I have no recollection of my son holding before me but two

briefs outside of his own small office business, one was with Mr. Howell, in Ham *vs.* Rowe, and the other was for Mr. Clarke, in Clarke *vs.* Carey; but in the latter case the jury gave, as I thought properly, a verdict for the defendant against the sworn evidence of Mr. Clarke, who was the chief witness for himself. How could it be otherwise? The jury knew the man.

I pronounce the whole of this sixth paragraph a tissue of brazen falsehoods from beginning to end. I am sorry to have to use such strong language, but no other words will express the truth.

CHAPTER VII.

Observations on the Seventh Paragraph of Mr. Clarke's Petition.

"That said Hon. E. B. Wood is in the constant habit of receiving, at his own private house in Winnipeg, persons who go to him to ask for his legal opinion and advice in matters affecting their interests, and which must naturally come afterwards before said Hon. Chief Justice Wood, as a judge of the Court of Queen's Bench, for trial; that he gives his opinion, and even recommends such persons so consulting him as to what attorney they should retain, and warns them against retaining other attorneys who are not his favorites."

Matters, judicial as well as everything else, were new and unsettled when I came here, and for some time after; and, to this day, I have been more or less annoyed by persons having legal business to transact, in writing letters to me, or personally calling upon me, in respect of the same. That is not at all surprising, when the then unsettled state of the law, and its practices, are considered. As it was manifestly done in good faith, and without consciousness of impropriety, I uniformly handed the letters to the Clerk to answer. "That it was improper to address such letters to me, and that my advice to them was, to take advice from a lawyer, who was the proper person to apply to;" and I told those who called on me: "That it was improper for me to hear them;" and I explained to them the reason why; and I uniformly had one way of dismissing all such persons, by telling them: "I would give them the best advice it was in my power, and that was, to take advice of a lawyer." In such cases I have been asked: "What lawyer would you recommend?" and my answer has invariably been: "That you must determine for yourself. I cannot select a lawyer for you. There are many respectable lawyers in town. I cannot recommend any one in particular. It would not be right for me to do so. You must make enquiry and make your own choice."

But all this is well nigh at an end. The people are learning better; yet, once in the while, it still occurs; and I understand that it sometimes even now happens in the older Provinces; and I learn from a judge of long experience in my native Province of Ontario, that the method I have adopted is that uniformly pursued by the judges of that Province.

All I can say to this paragraph is, that in all its parts it is a most wicked, malicious and satanic falsehood. Laying aside all sense of honesty, honor, propriety and decency, no judge, unless he were an idiot or a fool (and I am not charged with being an idiot or a fool), would do what I am charged with in this paragraph; for it would certainly lead to exposure, and a train of insuperable embarrassments, with no compensating advantages.

Now for the name of one person out of those whom I am in the constant habit of receiving, &c., or for the name of one case in which such advice has been given, or for the name of one person whom I have recommended to retain any attorney, or warned against retaining other attorneys who were not my favorites! The name of no person, the name of no attorney, the name of no case is given; and yet if but one such case occurred, it would be known to all Winnipeg!

CHAPTER VIII.

Observations on the Eighth Paragraph of Mr. Clarke's Petition.

"That the said Hon. E. B. Wood is in the constant habit of using the most abusive language towards his suitors and members of the Bar of Manitoba in open Court and in Chambers, and displaying such uncontrollable infirmities of temper and bursts of passion whilst acting as a judge as to disgust all parties who are so unfortunate as to be compelled to submit to his abuse, insults and injustice."

In the introduction of a system of jurisprudence with all its complications, and technical rules, into a new and in a judical sense, untrained state of society, where the profession, as a rule, had not an overstock of legal lore and less legal training, as was the condition of the society and of the profession (with few exceptions) in Manitoba, when I came to the Province, the trouble, vexation and annoyance to which a judge is subjected may be imagined, but can scarcely be realized.

But with all the difficulties I had to contend with, I bore everything patiently and with equanimity, except when through the seeming indifference and inattention of attorneys and counsel the interest of suitors suffered. In such cases, I must confess, sometimes my strong sense of intrinsic justice and right got the better of my "placid serenity," and I may have appeared and been rather severe upon attorneys and counsel. I may say, I think with truth, this or the natural improved condition of attorneys and of the profession in general, and the advanced position to which our whole judicial system has now attained, has rendered rare any occasions for unpleasant animadversions on the conduct of professional gentlemen from the Bench. But even now, I think it the duty of the Court to stand between "the lawyer and the client;" wherever wrong is done, to right it, or intended to be done, to arrest it; and while I have the honor to hold Her Majesty's Commission, I shall act upon that principle, whatever may be the consequences to myself. In no other case have I been severe on attorneys or barristers. In the instances referred to I have been and shall continue to be stern.

Mr. Clarke in this respect, may complain; but injustice he has no reason to. His conduct, in so far as it has been disclosed in the Courts, is simply infamous. In my previous observations I have given some instances; many more might be added; and what in the eye of the lawyer aggravates all, is his supreme ignorance of all law both civil and criminal. He understands the arts of intrigue and low cunning; but he has no knowledge of law in its higher and more exalted sense. He may complain of the plain language that has been dealt out to him from the Bench; but in every case, he brought it upon himself, and it has been fitting and proper. If he thinks otherwise, let him state a case for the opinion of His Excellency in Council, and then on hearing the counter statement, a correct opinion may be formed on the subject.

CHAPTER IX.

Observations on the Ninth Paragraph of Mr. Clarke's Petition.

"That the said Hon. E. B. Wood is in the habit of taking the unsworn statements of persons on the streets or at his private residence in preference to the testimony of sworn witnesses in Court, and of giving such unsworn statements more credence than the testimony of sworn witnesses, and that he did so particularly in the case of Sinclair *vs.* McDonald *et al.*, in October, 1880, and was exposed through the public press for so doing."

It is hardly to be expected that I am to disprove the general allegations in this paragraph. It is all untrue, and most maliciously untrue, from beginning to end. But in this paragraph, a case and names and some incidents are given, which is a great relief; for we have something to go upon, and can by records and facts, test the truth of the charge, in so far as the particular case is concerned.

The case of Sinclair *vs.* McDonald and others, as it is called, is mentioned as a case, in which evidence was taken, outside of the Court and not under oath, for which I was exposed in the public press.

This deliberate and mean falsehood was no doubt provided Mr. Clarke by Mr. Thomas Kennedy of this City, barrister, who at present has, and for about a year past has had the management and conduct of the legal business of Manning, McDonald & Co., railway contractors, on section 16, Canada Pacific Railway, and the defendants in the above case, or by Messrs. Manning, McDonald & Co: or some members of that firm. The evidence of this will hereafter appear.

The contract of Manning, McDonald & Co. commences at Rat Portage, a hundred and thirty miles or so east of the city of Winnipeg, and thence extends eastward forty or fifty miles or more, out of the limits of the Province of Manitoba and the jurisdiction of its Courts, in the District of Keewatin. The company and their solicitor seemed to have formed the notion, if they made their contracts in Keewatin and the alleged breach was in Keewatin, the Courts in Manitoba had no jurisdiction of the alleged cause of action, although the defendants might be served with writ of summons within the limits of the Province. The courts held otherwise. The company's agents in Winnipeg were served—one of the company, when happening to be in Winnipeg, was served in spite of this technical objection which they thought protected them, they were involved in litigation. Laboring men would come into Winnipeg and sue contractors for wages by serving an agent or one of the contractors; and to these suits for labor, their defences were seldom successful. The company were highly exasperated. They censured in no sparing terms the Court and the judge.

In trials by jury, they fared no better. For all this, of course, the Chief Justice was to blame. As for myself, I endeavoured, and I believe I did, hold the scales of justice even, and in most cases I thought the laboring man right; and in all cases, where there was any ground for controversy or difference of opinion, I delivered my judgments in writing.

The same difficulties were experienced by Mr. Joseph Whitehead, railway contractor; and Mr. Ryan, railway contractor; and Murphy & Upper, railway contractors. One great embarrassment was, when the laborers had worked a while, or at the end or termination of their service, they found that, although when they commenced work and during its continuance, they supposed they were working for the Government contractor, it was *then* alleged they were not working for the contractor at all, but for some irresponsible sub-contractors. As a rule the sub-contractors had nothing out of which the men could collect their wages. We had a great many of such cases. They were to me most distressing and painful. Some of my judgments were published in the papers. At random, I clip the following from the Manitoba "Free Press," of April 21st, 1880:—

CONTRACTORS AND THEIR RESPONSIBILITIES.

The Judgment in Bell and McDonald vs. Bryan.

The following judgment was given by the Chief Justice, in the case of Bell and McDonald *vs.* Ryan. It is interesting as bearing on the relations and responsibilities of contractors with reference to those who may be employed by them, and as it contains some useful hints, we give it *in extenso*:—

In this action, the plaintiff seeks to recover from the defendant the amount of due bill and order on the defendant, given by Watts & Welch, foremen and agents of the defendant, for work done by the plaintiffs for the defendant, and at his request through his agents, Watts & Welch, in getting out ties and materials for the defendants, for, and in the prosecution of, a railway construction contract, taken from, and made by him with the Government of Canada, being the sum of $133, and interest thereon from the 26th March last.

The defendant, on the 19th August, 1879, entered into a contract with Her Majesty, whereby he bound himself to find all things, and make and contract a

line of railway from Winnipeg to Stoney Mountain, and thence westward for 100 miles.

The contract contains all the usual, and some unusual clauses, on the part of the contractor, embraced in such contracts.

The contractor was to furnish ties and lay the track. These ties would have to be got out of the woods eastward, towards Rat Portage and the Lake of the Woods, along what is known as Section 14, through which a railway track has been for some time laid, and over which trains have been running, transporting materials and supplies.

The transportation of ties and material, got out in these localities by railway trains, become a necessity; and firewood for the engine was a means for the accomplishment of the end.

From the evidence, it appears that Watts & Welch were engaged as foremen, or in some other capacity employed, either as foremen and agents, or as sub-contractors, by the defendants, to get out ties, wood and other material for the purposes of his contract, along and adjacent to the line of the Canadian Pacific Railway, where the track was already laid, and trains running eastward from St. Boniface and through the Section 14.

These operations were commenced by the defendant, through Watts & Welch, early last autumn, and continued through the winter.

Camps were established, and men employed and set to work. Watts & Welch were at the head of these operations, and had the control and supervision of the work, and themselves engaged laborers, representing that the defendant, as Government contractor, would be responsible for their wages. From the evidence in the case, and admissions made by the defendant himself on the trial, Watts & Welch are not men of substance, means and capital enabling or qualifiying them to afford the proper security to employees; nor of moral standing and character to inspire confidence to labor; and it is quite certain that the laborers employed by, and under them did not work on the credit and reputation of Watts & Welch, but on the faith, credit and reputation of the defendant, the Government contractor.

What was the real and undisclosed arrangement between Watts & Welch and the defendant we do not know. The defendant on his examination in his own behalf did not state, nor did he produce Watts & Welch or either of them as witnesses or witness on his behalf, to state what in fact the arrangement was.

I gather, from the evidence of Mr. Brooks, the paymaster and book-keeper of the defendant, that from time to time, supplies were furnished by the defendant for the camps of these employees at which the men lodged, and boarded at the normal rate per week, which was deducted from their wages; and that from time to time, Mr. Brooks went down where the work was going on and made inspection and paid the men. It also appears that, occasionally, the defendant himself went down. It is quite certain the defendant kept a watchful supervision, as it was proper he should do, over all his operations in that quarter.

It appears the wages of the men were running in arrear, of which fact it is but fair and reasonable to infer the defendant, through his paymaster and book-keeper, had notice and cognizance; and when, at last, the men insisted on being paid, they were for the first time informed that the defendant was not responsible for their wages, although he had received the fruits of their labor, but that Watts & Welch were alone responsible, and that Watts & Welch had already exhausted, and in fact had overdrawn their account with the defendant; but this allegation of fact was denied by Watts & Welch; and in the case of the present plaintiffs, they gave them a memorandum in the form and words as following:—"Received from Bell & Mc-"Donald 1,830 ties at 12½ cents per tie; 12 cords of dry wood and 50 piles, in all mak-"ing the sum of $237, less amount for plant and provisions, $104, leaving a balance "due Bell & McDonald of $133; Mr. Ryan will please settle this out of Watts & Welch's account."

26th March, 1880.

WATTS & WELCH,
Per J. A. WELCH.

The plaintiffs presented this memorandum to the defendant and demanded payment.

The defendant denied liability, and said he had no funds in his hands of Walts & Welch with which to pay this order.

The plaintiffs bring this suit. Can they recover?

By clause 10 of the defendant's contract, the defendant is bound to keep a foreman at the head ef each department of every separate and isolated part of the works carried on under the contract, who is to be the lawful representative of the contractor and to have authority to bind the contractor in all matters within the scope of his employment. I think it unquestionable the works carried on by Watts & Welch were within the works contemplated in the contract, and I draw, as inference of fact, that they were the foremen of the defendant who is bound by what they did within the purview and scope of such foremen. The employment of the plaintiffs in the work in which the foremen were engaged was quite within the scope of that authority, and the defendant is bound by their act.

The only way that defendant can escape this conclusion is by setting up that Watts & Welch were sub-contractors under him. But he cannot set up this defence, for section 17 declares that the defendant shall not make any assignment of his contract, or any sub-contract, for the execution of any of the works thereby contracted for; and a forfeiture of future payments to him from the Crown and of the entire contract is a condition of a breach of this stipulation.

As between the defendant and Watts & Welch, the latter may have been sub-contractors under him. With that relation, in so far as they are concerned, the outside world is perfectly indifferent; but when that relation is attempted to be set up by the defendant to evade responsibility of wages earned in the execution of works for which he is paid by the Crown, it cannot escape criticism. In all such cases I am inclined to think the Court will construe the relation, which the Government contractor may contend to be that of contractor and sub-contractor under him, into that of principal and foreman or agent, and hold the Government contractor bound by the acts of the foreman or agent within the scope of his employment.

If, therefore, in the present case, Watts & Welch were the foremen or agents of the defendant, there can be no question of the right of the plaintiff to recover what they claim, as the amount is admitted; and equally may they recover even though as between Watts & Welch and the defendant the foremen were the sub-contractors of the latter, for as to the plaintiffs they were principals and agents.

Clause 20 of the contract shows what solicitude there is on the part of Her Majesty's Ministers that the wages of all employees should be faithfully and promptly paid; since there is in that clause an express reservation to Her Majesty of the right at any time to step in and pay all arrearages of wages and charge them over against the contractor, who is bound at once to repay the same to Her Majesty.

In conclusion, I remark that the laborers under contractors on Government works must be paid, whether directly employed by contractors or indirectly through sub-contractors, provided their labor is expended on works let to them by the Crown. All laborers on such works, by whomsoever retained, have hitherto been paid, if not by the contractors, by the Crown. Aside from all other considerations, all experience teaches that prompt and honest payment of the wages of employees, is most advantageous to contractors, and is the highest expediency. An evasion of payment, through the artifice of irresponsible sub-contractors, is a lasting and irreparable injury to every employer of labor, a violation of a principle of natural justice, and a reproach upon Her Majesty and her Crown. On Government public works, these strifes and contentions between the contractors and the employees who have with confidence expended their toil and labor upon them, must be stamped out. Already they have raised the price, and diminished the efficiency of labor, and thereby greatly embarrassed the straightforward and upright contractor. If they are permitted to continue, in view of the large public works which are now only commenced in the North-West, the consequences may prove serious, if not disastrous.

Courts have, comparatively speaking, but little power over the wrongs to which I have adverted, for few of the wronged can carry on a litigation to an issue in vindication of their rights against influential and powerful antagonists; and many, as a consequence, abandon their claims altogether. But these contractors may take warning as to the light in which labor claims will be viewed when they are brought before the Court. The rule is that the honest laborer must be paid; and it will be difficult for contractors, before a jury, succesfully to take shelter behind an irresponsible sub-contractor.

Judgment was given for the plaintiffs for $133.76.

Mr. Wood for plaintiffs; Mr. Blanchard for defendant."

I must confess I was not a popular judge with railway contractors.

On the 2nd of April, 1880, William B. Sinclair recovered against Joseph Whitehead a judgment, in the Court of Queen's Bench for the Province, for $5,814.33 for carrying freight for Whitehead to and along his contract of railway work on section 15 of the Canadian Pacific Railway. It appears that in the month April, a garnishee order was obtained by Sinclair, through Biggs and Wood his attornies, upon Manning, McDonald & Co., to pay to Sinclair what money or debt they owed to Joseph Whitehead, not exceeding the amount of Sinclair's judgment against Whitehead—the amount of such indebtness from Manning, McDonald & Co. to Joseph Whitehead, not being then, as Manning, McDonald & Co., alleged, fully known, but they were with all convenient despatch, to ascertain the amount of that indebtedness and pay it over to Sinclair. This order was made on the 20th April, 1880.

Subsequent to this order, another attaching order was, in the case of Cooper, Fairman *et al. vs.* Whitehead, Fraser and Grant, served on Manning, McDonald & Co., attaching any indebtedness from them to Whitehead, Fraser and Grant, the former was, by the attaching order of Sinclair, payable to him, the latter was payable to Cooper, Fairman & Co.

The first time this matter came under my notice so as to be remembered was in the month of October, 1880. It was then made to appear that Biggs & Wood, the solicitors of Sinclair; and who also for some time previous, had been acting as the solicitors for Manning, McDonald & Co., were being pressed by Sinclair for the payment of the money on his judgment, due to Whitehead from Manning, McDonald & Co., which had then been standing some six months, for Manning, McDonald & Co. to make up and determine what they owed to Whitehead, but which they had from several causes, as they alleged, been unable to do. It seems that then they were told peremptorily it must be done without any further delay. They then made up the accounts, and made the entire indebtedness to Whitehead alone, and to Whitehead, Fraser & Grant, as a firm, altogether to be the sum of about $2,000; and these accounts and this sum were verified by affidavit, and they proposed and offered to pay this sum into Court, on an order being obtained from a judge discharging them from further liability; and the Court was to find out and apportion the proper sums to Sinclair and to Cooper, Fairman & Co.; and I was applied to for an order for that purpose, which I declined to make. This was my first personal knowledge, as a judge of the matter. On the 9th of October, 1880, an application was made to me, on affidavit verifying an order on Manning, McDonald & Co. for the payment of the money, and demand and refusal; and I was made to understand that Manning, McDonald & Co. would not pay even into Court the $2,000 odd which they, by affidavit, contended was all they owed Whitehead individually, and to Whitehead, Fraser & Grant as a firm, unless an order of a Judge was obtained relieving them from all further liability in the matter. I made an order for the entry of judgment against Manning, McDonald & Co., on the garnishee order made for the payment of the money on the 20th April previous; on the garnishee summons judgment was accordingly entered and execution issued and seizure thereunder made, and a stop order and summons was served on the Bank of Montreal and another on Mr. Quigley, the agent of Manning, McDonald & Co. This created a *furore* with Manning, McDonald & Co., many or some of whom were in Winnipeg at the time, and their solicitor Mr. Kennedy, and the Chief Justice was roundly denounced and threats of impeachment,

petition for dismissal and all sorts of things, for doing what, according to law was his duty, and what he could not avoid doing—simply making an order for the entry of judgment on an order for the payment of money, which in fact under the statute might have been done without his order at all.

On the return of the attaching orders and summonses, respectively, on the Bank of Montreal and Mr. Quigley, after considerable discussion *pro* and *contra*, the counsel for all parties agreed upon a consent order, that the garnishee summonses on Quigley and the Bank of Montreal should be withdrawn; that the Sheriff should withdraw from seizure, and the execution be withdrawn upon Manning, McDonald & Co. paying into Court to the credit of the matter, of the judgment of Sinclair, and Cooper, Fairman & Co., $5,100. In pursuance of this order, the $5,100 was paid into Court. I ought to mention that counsel agreed between themselves that cost of all proceedings, including Sheriff's costs, &c., should be liquidated at $75. When signing the consent order, I remarked that before I could give my sanction to that item of the order, I must have some data to go upon. The counsel on both sides said they had noted up the costs and they were satisfied with the amount. Two summonses in Chambers were forthwith thereafter taken out, one by Manning, McDonald &Co., by Mr. Kennedy, for payment out of Court, back to them of $2,000.

This application was based upon affidavits that they were not indebted to Whitehead, individually, and to Whitehead, Fraser & Grant as a firm, but to about $2,000—in no event to exceed $2,400; upon the return of the summons, after hearing argument, I discharged it, the other summons was issued at the instance of Sinclair by Biggs & Wood, for the payment out of Court, what should appear to be due from Manning, McDonald & Co. to Whitehead individually; and this application was based upon certain affidavits. On the return of this summons, for three days, I heard evidence and particularly that of Charles Whitehead, the son of Joseph Whitehead, who was the foreman of his father, and appeared to know all about the accounts; and after a full and most exhaustive examination and argument of the whole matter, for three whole days, I made an order that $3,039.65 should be paid out of Court to Sinclair, as money in Court owing by Manning, McDonald & Co. to Joseph Whitehead, individually. This order was made on the 20th day of October, 1880, and is the occasion of the charges made against me in this paragraph; and I solicit its remembrance.

Subsequently in Michaelmas term, in November, Mr. Kennedy moved a rule *nisi* upon Sinclair, to shew cause why the order made by myself, ordering $3,039.65 to be paid out of Court, to Sinclair, should not be set aside, on the ground that it was erroneous—no such sum being rightly payable thereout to Sinclair—motion being supported by many and strong affidavits. I remarked to Mr. Kennedy that I had made the order after very lengthy and careful examination, and I had no doubt of its correctness as far as it went, but I had very strong suspicions that more money still was coming to Sinclair. However, he might at once take an order, referring to the master, to take the whole account; as it was desirable that the matter, about which, there seemed to me, without cause, to be dissatisfaction, should be cleared up and put an end to. He accordingly took his order.

A few days after this order was granted, on the 9th day of November, the issue of Cooper, Fairman & Co., against Manning, McDonald & Co., as to how much the latter owed the firm of Whitehead, Fraser & Grant, came on before me in Chambers to be tried, and after hearing the evidence, Mr. Kennedy, counsel for Manning, McDonald & Co., consented to a verdict for $1,966.59, and from the disclosures made on the trial, in the evidence, it was quite manifest that quite a further large sum than had been ordered by me to be paid to Sinclair was yet payable to him. I was surprised when I reflected upon the affidavits, Manning, McDonald & Co. had filed. The business of the Court was over and Mr. Killam, counsel for Cooper, Fairman & Co., and Mr. Kennedy, counsel for Manning, McDonald & Co., were talking of the matter. I do not recollect that any other person was present except myself. I joined in the conversation. I recollect I remarked to Mr. Kennedy, I was afraid that there might be some truth in a remark I had heard Mr. Charles Whitehead

make, that John J. McDonald had told him that if he would make these accounts come out all right for them he would give a $1,000 to him out of the accounts, and that Shields here in Winnipeg had made the same proposition to him. "I am afraid" I said, speaking playfully, "there is some hunkersliding about these accounts." As I have said before, I think no one was present but Mr. Killam and Mr. Kennedy, and it was after the business of Chambers was over and after the issue of Cooper, Fairman & Co. against Manning, McDonald & Co. had been tried and a verdict taken as to the amount by consent. I probably should never have recollected the incident had my attention not been called to the following letter which appears two days after in the Winnipeg *Times* newspaper.

"*A Matter in Chambers.*

"To the Editor of the *Times:*

"SIR,—Having been informed that yesterday the Hon. Chief Justice Wood made from his seat in Chambers before a number of people the following statement: 'There has been some *shinnanigan* about this matter.' I understand from conversation with Charles Whitehead, they, the contractors (Manning, McDonald, McLaren & Co.,) offered to take $1,000 of this amount and pay it to him. Even Shields the other day made some such offer. They are a nice lot.

"I hope you will allow me, through your columns, to totally deny the statement on which the insinuations are based as the press is the only way of meeting the publicity which must follow such a statement from one so high in authority.

"As regards myself, of late I have had no conversation with Mr. Charles Whitehead with reference to the matter, and any such statement if made by him is false.

"Yours faithfully,
"JOHN SHIELDS.

"Winnipeg, 10th November, 1880."

A wrong turn was given the matter altogether by Mr. Kennedy for what purpose or with what object I did not then at all comprehend, but of course I could not notice it.

On the next day I observed in the Winnipeg *Times* newspaper, the following letter from Mr. Charles Whitehead in answer to Mr. John Shield's letter:

"*A Matter in Chambers.*

"To the Editor of the *Times.*

"SIR,—In your issue of this morning I see a letter over the signature of John Shields in which he quotes some of the remarks of the Chief Justice and denies their truth. I did state before the Chief Justice that Manning, McDonald, McLaren & Co. offered, if I would pass their accounts against my father at their prices, and accept the value they choose to place on my father's account against theirs, to pay to me personally, the difference between the amount thus found due my father and the amount actually due him, which was about $1,000, and I state the same now; and I further say, that the said John Shields was aware of and party to that offer, and hence the Chief Justice stated only the fair truth.

"Yours truly,
"C. WHITEHEAD.

"November 11th, 1880."

It may suggest itself that I saw Charles Whitehead and got him to write the letter in reply. I did nothing of the kind. I have never spoken to him on the subject one way or the other. I then regarded it as a dispute between Shields and Whitehead with which I supposed I had nothing to do; but subsequent events have led me to believe that Mr. Kennedy and his clients, Manning, McDonald & Co. had a

deep meaning in this, as the sequel will show. But before entering upon that phase of the matter, I think it best, to finish the case, as it is called of Sinclair *vs.* Manning, McDonald & Co.

I never held any examination into the indebtedness of Manning, McDonald & Co. to Joseph Whitehead individually, or to Whitehead, Fraser & Grant as a firm, but on two occasions, one, prior to and on my making the order on the 20th October, 1880, for the payment out of Court of $3,039.65 to Sinclair, and which was the only occasion on which Charles Whitehead in this case was ever examined by or before me (and shortly after I had made the order, I heard him make the remark as to John J. McDonald and John Shields about the accounts) and the other on the 9th of November, nearly a month thereafter, on the trial of the issue of Cooper, Fairman & Co. against Manning, McDonald & Co., which resulted in a verdict by consent of $1,966.59; but on the trial of this issue Charles Whitehead was not examined. In short, I never examined Charles Whitehead but once, on or before the 20th October, 1880; some days after that and before the 9th November, I heard Charles Whitehead make the remark about McDonald and Shields.

I make this remark to show the impossibility of the remark which I had heard Charles Whitehead make, for it was not addressed to me, having any influence with me, in determining any matter in controversy between the parties, for no matter thereafter in controversy was determined by me.

On the order of the Court made in Michaelmas Term, the master reported in Hilary Term, that Manning, McDonald & Co. were indebted to Whitehead individually, in the sum of $3,834.15, which had been garnisheed and was payable to Sinclair in the judgment of Sinclair *vs.* Whitehead $794.50 more than I had ordered to be paid by my order of the 20th October, and against which this reference to the master was an indirect appeal; no motion was made against, or exception taken to, the report. The Court therefore, ordered that this additional sum of $794.50, together with the costs of reference, should be paid out of Court to Sinclair.

In this matter Manning, McDonald & Co., after having had six months to prepare their accounts, commenced swearing, and procured their accountants and book-keepers to swear, that they were not indebted to Whitehead, individually, and to the firm of Whitehead, Fraser & Grant, but to about $2,000; and they were indignant because the Chief Justice would not (as, in fact, he could not) accept their sworn statement of the fact, and make an order discharging them altogether, on their paying that sum into Court, to be by the Court distributed to the parties entitled to it; and they threatened all sorts of representations, as they said, to Sir John A. Macdonald and the Government, against the Chief Justice. It, in fact, became a question whether railway contractors could over awe the judges of the Court or not. In my simplicity I told them they would have to submit to the laws of the land, and decrees and orders of the Court, although they were Government railway contractors, and had powerful influence at Ottawa; and the law had its course. Instead of $2,000, the sum to which they had sworn, they were found to be indebted to Whitehead, Fraser & Grant in $1,966.59, to Whitehead, individually, in $3,834.65, making in all for debt alone $5,801.24.

After such an exposure, as they thought, all through the obstinacy and tyrany of myself, they, as it seems, for they decline now to disown it, availed themselves of Mr. Clarke, to put this ninth dishonest and false paragraph into his petition.

I make this latter statement partly on information, the authority for which I am not at liberty to disclose, and partly on inference, the ground for which I will now state.

On receiving a copy of the petition from the Honorable Secretary of State, I noticed the ninth, tenth and eleventh paragraphs with surprise; and at first thinking Mr. Clarke had taken liberties in the legal affairs of Manning, McDonald & Co., which, for their own credit, it seemed to me, they had better let rest in silence, and knowing that their solicitor, Mr. Kennedy, knew all about the matters that the ninth and tenth paragraphs set forth, and that the easiest way to meet them was to get his denial of them as charged.

I wrote to Mr. Kennedy a letter, of which the following is a copy:—

"WINNIPEG, 15th June, 1881.

"DEAR SIR,—(1) In consequence of certain erroneous reports which have been made in respect of the matter, Sinclair *vs.* McDonald *et al.*, in which you were the solicitor and attorney for the garnishees, in October, 1880—'That I had taken unsworn statements of persons on the street as evidence in the matter, and gave them more credence than the sworn testimony of witnesses in Court, and that I was exposed, in the public press, for so doing,'—I have to ask you to state to me whether or not there is any truth or any foundation for the charge.

"(2) I am also charged with 'gross injustice and partiality against the defendants in the case of Hogan *vs.* Pitblado *et al.*, in preventing the defendants from having any chance of appealing from my decision, by preventing the shorthand reporter, Mr. Caldwell, from taking down the evidence given on the trial, the defendants having only my notes of the evidence to rely upon, which are assumed to be incorrect and defective.'

"Will you be good enough, as you were the counsel for the defendants in moving and arguing the rule *nisi* for a new trial, in this cause, to inform me if there is one word of truth in this whole charge.

"(3) It is said that I ordered the plaintiffs, in McAdams *vs.* McDonald *et al*, to be summoned on the same day that I made the order, to appear and answer the demand of the plaintiff at 11 o'clock in the forenoon, in October, 1879, and at 11 o'clock, in defiance of all law and usage, I gave judgment against the defendants.

"I have no knowledge of this matter at all, but of one thing I am certain, that under the 'speedy trial' clause in the County Courts Act, I never, knowingly, in any case, made such an order. If any such occurrence took place, as the papers on file in the clerk's office will show, as possibly in the numerous cases of that kind then passing the Court, a mistake may have occurred through an oversight, without its having been brought to my notice—kindly, shortly state the facts; and please inform me if it was my mistake or that of the bailiff, or of the defendants overlooking the summons.

"I think you owe it to me and to yourself to favor me with an explicit statement on these several matters.

"Be good enough to let me have an early reply,

"Yours truly,
"E. B. WOOD.

"THOMAS KENNEDY, Esq., Barrister, &c., Winnipeg."

I caused this letter to be placed in the hands of Mr. Kennedy on the 16th June last, but receiving no reply, on the 27th of the same June, I wrote to him as follows:—

"WINNIPEG, 27th June, 1881.

"DEAR SIR,—Referring to my letter to you of the 15th inst (which has slipped your memory), be good enough to let me have a reply to-day, or to-morrow at farthest.

"Yours truly,
"THOMAS KENNEDY, Esq., Barrister, &c., Winnipeg." "E. B. WOOD.

And yet receiving no reply, I, on the 6th July, again wrote him the following note:—

"WINNIPEG, 6th July, 1881.

"DEAR SIR,—Will you be good enough to inform me whether or not you intend to answer my letter to you of the 15th ult., nearly a month has elapsed; I am yet without a reply. It seems inexplicable.

"Yours truly,
"THOMAS KENNEDY, Esq., Barrister, &c., Winnipeg." "E. B. WOOD.

It is now the 20th of July, and I am even now without so much as an acknowledgment of the letter or subsequent notes, although I had each placed in Mr. Kennedy's hands. His conduct was so extraordinary that I spoke to Mr. Justice Miller, and explained to him the facts, and knowing him to be familiar with Mr. Kennedy, I asked him if he would see him and get an explanation of his conduct. He said he would do so. I afterwards understood from Mr. Justice Miller that he had seen Mr. Kennedy and asked an explanation; and that Mr. Kennedy had informed him that he had sent the letter or a copy of it to his clients, and to Toronto and Ottawa, or Toronto or Ottawa, and that he had been instructed not to answer it. At this I was astonished. In the letter I asked from Mr. Kennedy but questions of fact, which, from the records of the Court, and from his own knowledge, he could answer but one way, and which I thought alone concerned myself. The conduct of Mr. Kennedy in this matter, coupled with other circumstances, I submit reasonably leads to the inference and conclusion, that Manning, McDonald & Co., and Mr. Kennedy, as their solicitor, have at least furnished the matter of the Sinclair garnishment, in this 9th paragraph, of Hogan *vs.* Manning *et al.* as it is called, but it should be Hogan *vs.* Pitblado *et al.*, in the 10th paragraph, and of McAdams *vs.* McDonald *et al.*, but should be Black *vs.* McDonald *et al.*, in the 11th paragraph, of the petition, respectively mentioned, out of which the tissue of transparent falsehoods in these paragraphs has been manufactured, and now when these gentlemen are brought face to face with these vile concoctions, and are challenged as to their accuracy, they retrace their slimy course and are silent! Honorable men! All honorable men!

I will now proceed to an examination of paragraph 10 cognate to, and coming from the same source as, paragraph 9.

But, before leaving this paragraph, let me remark that Manning, McDonald & Co. complain that, although they had sworn as strongly as they could, that they were not indebted to Whitehead individually, and Whitehead, Fraser & Grant jointly, but in about $2,000, and upon their affidavits, asked me to make, on payment of that sum into Court by them, an order discharging them from all indebtedness to Whitehead individually, and to Whitehead, Fraser & Grant, as a firm. I would not make the order, but told them they could pay into Court what sum they liked, but nevertheless, the true indebtedness would have to be investigated. The consequence was that they had to pay, instead of $2,000, the sum they swore was the true indebtedness, $5,801.24, proved, demonstrated and, as a consequence, admitted to be the real and true indebtedness.

I must confess I did not think it possible for human nature to be so depraved as to make an attack of this kind in such a matter upon a judge. It would really seem they must have had encouragement on some other ground than the merit of complaint.

As a specimen of the kind of swearing there was in this matter to begin with, I send a copy of an affidavit made by John J. McDonald, hereto annexed.

Affidavit of John J. McDonald.

Messrs. Manning, McDonald, McLaren & Co., in account with Joseph Whitehead, or Whitehead, Fraser & Grant.

Dr.

December 1st, 1879.—To amounts for goods and delivered to them	$ 2,343 90

Cr.

March, 1880.—By Balance as per amount.....	146 34
To balance, due as per affidavit.....	$ 2,197 56

(COPY.)

In the Queen's Bench.

W. R. Sinclair, plaintiff, *vs.* Joseph Whitehead, defendant, and Alexander Manning, John J. McDonald, Alexander McDonald, Peter McLaren, James Shields, and James Isbister, garnishees.

I, John J. McDonald, of the City of Winnipeg, in the County of Selkirk, contractor, one of the above named garnishees, make oath and say:—

(1.) The above garnishees are indebted to the above named defendant Joseph Whitehead, or to the firm of Whitehead, Fraser & Grant, in the sum of two thousand one hundred and ninety-seven dollars and fifty-six cents.

(2.) The paper writing hereto annexed marked "A" correctly and truthfully shews the accounts between the garnishees and the said Joseph Whitehead or Whitehead, Fraser & Grant, as I believe, and the sum admitted as the balance due by the said garnishees to the said Joseph Whitehead or Whitehead Fraser & Grant, that is to say: Two thousand one hundred and ninety-seven dollars and fifty-six cents, is the sum due and payable by the said garnishees to the said Joseph Whitehead or Whitehead, Fraser & Grant, at the time of the service of the garnishee stop order aforesaid except as hereinafter mentioned.

(3) Subsequent to the service of the garnishee stop order aforesaid, Messrs. Cooper & Fairman causes another to be served on their behalf, claiming the said money so due by the garnishees to the said Joseph Whitehead, or Whitehead, Fraser & Grant, to satisfy a judgment obtained by them against the said Whitehead, Fraser & Grant, and are now prosecuting an action against the garnishees in respect thereof, and the said money is also claimed by one Murdoch McKinnon, in pursuance of a debt owing to him by Whitehead, Fraser & Grant, a garnishee stop order, for which was served on the garnishees prior to the one of Cooper & Fairman.

(4) The said sum so due by the garnishees to Joseph Whitehead, or Whitehead, Fraser & Grant, being in controversy between the herein plaintiff and Messrs. Cooper & Fairman and the said McKinnon, is desired to be paid into Court for distribution as the Court may deem fit and proper.

(5) On the Eighth day of April last, I paid the said Joseph Whitehead the sum of four hundred dollars.

Sworn before me, at the City of Winnipeg, in the County of Selkirk, this 11th day of September, 1880.
ED. P. LEACOCK,
A Commissioner in B. R., &c., Selkirk.

JOHN J. McDONALD.

CHAPTER X.

Observations on Paragraph Ten of Mr. Clarke's Petition.

"That said Hon. E. B. Wood was guilty of gross injustice, and particularly towards the defendants in the case of Hogan *vs.* Manning *et al.*, in which case the plaintiff is represented by the said Chief Justice's own son and his nephew, Messrs. Biggs & Wood, attorneys and barristers, of Winnipeg, and prevented the defendants having any chance of appealing from his decision, and preventing the short-hand reporter from taking the evidence, so that the defendants had only his, the said Chief Justice's, notes of evidence to rely upon, in a matter involving about $5,000."

I am charged in this paragraph with "gross injustice and partiality against the defendants, in the case of Hogan *vs.* Manning *et al.* (it should be Hogan *vs.* Pitblado *et al.*), in which the plaintiff was represented by the said Chief Justice's own son and his nephew, Messrs. Biggs and Wood, attorneys and barristers, of Winnipeg,

and prevented the defendants having any chance of appealing from his decision by preventing the short-hand reporter from taking the evidence, so that the defendants had only his, the said Chief Justice's, notes of the evidence to rely upon, in a matter involving about $5,000."

I must request in this connection a perusal of the letter to Mr. Kennedy of the 15th June, 1881, and remarks thereon in my observations on paragraph 9 of Mr. Clarke's petition.

There is no difficulty about this charge: Here we have specific charges:

(1) Biggs & Wood, the one my nephew and the other my son, were the attorneys and counsel for the plaintiff.

This is true, but how I am to be held responsible for that circumstance is not stated, nor do I well see. No misconduct or impropriety is charged in their conduct of the case. But the statement is no doubt introduced that from the fact that the plaintiff's counsel were my nephew and son, an inference of injustice and partiality on my part may be drawn, yet no incident of the trial nor any occurrence in respect of it is mentioned in this connection, whence the inference of injustice and partiality is to be inferred.

(2) I prevented the shorthand reporter from taking the evidence at the trial.

(3) I took away or deprived the defendants of the chance of appealing against the judgment of the Court by imperfect or defective notes of the evidence.

No circumstance or incident is mentioned in this case as evidence of, or as leading to the conclusion of injustice and partiality. Except the fact that Biggs & Wood were counsel for the plaintiff, the preventing the shorthand reporter from taking the evidence, and the imputation but not direct assertion, that I took down the evidence in my notes imperfectly or defectively.

Mr. Kennedy did not act as counsel for the defendants at the trial at *nisi prius*, but Mr. Blanchard acted as their counsel, and the firm of Messrs. Bain & Blanchard were the attorneys of the defendants on the record. The case was tried before myself with a jury at the sittings of the Assizes in February, 1880, and resulted in a verdict for the plaintiffs for $7,000.

In the following Trinity Term—no Court sitting in Easter Term in consequence of the illness of the Chief Justice—a rule *nisi* for a new trial, or for the reduction of the damages to $3,000, on the ground that the verdict was against evidence and the weight of evidence contrary to the direction of the Judge and perverse was obtained.

Mr. Biggs opposed the rule and Mr. Kennedy was heard in support of it.

After deliberation the Court gave judgment. It was that "If the attorneys for the plaintiff within one week file with the clerk of the Court a consent in writing, signed by them to reduce the verdict to $4,000, then the rule *nisi* to be discharged without costs; the attorneys failing to do this, the rule *nisi* for a new trial is to be absolute on payment of costs."

I never heard or had any intimation of any difficulty or embarrassment in or about the evidence at the trial, on the trial, in moving the rule in term, on the argument in term or otherwise however, until I learned it from the petition of Mr. Clarke. The evidence was most carefully taken down at the trial by myself, and I now defy any inaccuracy or defect to be pointed out by any person. It was filed away with the papers in the cause, and was, as is the evidence in all cases freely accessible to all persons interested.

As the Assizes were somewhat heavy, I had, at my own instance, induced the Government at this Assizes to employ Mr. Caldwell, a very competent person for the purpose, and a gentleman of high standing, to take a report of the evidence in cases in shorthand, as it would expedite business, and would in the end, more than compensate his charges by the saving in time, of the indemnity to jurors, and the fees and payments to the Sheriff, Constables and other officers of the Court. Mr. Caldwell at this Assizes officiated as shorthand reporter, but never before; and I have not held the Assizes since.

Mr. Justice Dubuc, taking the Assizes last October, and Mr. Justice Miller last March. I recollect on the day the case of Hogan *vs.* Pitblado *et al.*, came up for

trial. Mr. Caldwell was present at the opening of the Court, and stated that he was obliged to be absent that day, as he had some notes of evidence to extend, which he had taken in a case for which Mr. Justice Dubuc was waiting, and could not well longer delay; and he begged to be excused for that day. I expressed myself as being very sorry, but I suppose it could not be helped. At the time this conversation took place in Court, this case had not been called on, but a case of Ask *vs.* Upper *et al.*, stood next on the docket, or was fixed for that morning. After Mr. Caldwell had left the Court room, the whole of the conversation with him that I have narrated, having been in open Court, and having been heard by Counsel for the plantiff and defendants in Hogan *vs.* Pitblado *et al.*, both of whom were present, it was proposed to take on the case of Ask *vs.* Upper *et al.* Mr. Blanchard, counsel for the defendants in this case, said he was not ready, owing to the detention of witnesses in the railway cars, blocked up by a severe snow storm, between this and Chicago, who were necessary and material witnesses, and without whom he could not go to trial; but he said he was ready in Hogan *vs.* Pitblado *et al.* Mr. Biggs, who was the counsel for the plaintiffs in Ask *vs.* Upper *et al.*, as well as in Hogan *vs.* Pitblado *et al.*, insisted upon the former case being taken on for trial. After some discussion, it was arranged that the case of Hogan *vs.* Pitblado *et al.*, should be taken on, and the trial of it was accordingly proceeded with. It occupied the whole day. Now as to my preventing Mr. Caldwell, the shorthand reporter, from taking the evidence, I never heard of such a thing till through Mr. Clarke's petition. So soon as I received the copy of that petition from the Secretary of State I wrote the letter to Mr. Kennedy of the 15th June, set out in my observations on the 9th paragraph of Mr. Clarke's petition (which see) and I also wrote the following letter to Mr. Blanchard:

"WINNIPEG, 17th June, 1881.

"DEAR SIR,—It has been formally reported that in Hogan *vs.* Manding *et al.*, Pitblado *et al.*, I prevented the defendants from having any chance of appealing against the decision of the Court by preventing the shorthand reporter from taking down the evidence; so that the defendants had only my notes of the evidence to rely upon in the case—which are assumed to have been imperfect and defective.

"You were the sole counsel for the defendants at the trial.

"In justice to yourself and myself I think this charge should receive a formal, explicit denial or confirmation from the only person who really knows the facts, except, perhaps, Mr. Caldwell, the shorthand reporter.

"Be good enough, therefore, at your earliest convenience, to state whether or not there is any truth in, or foundation, in fact, for the report.

"Awaiting your reply,

"Yours truly,

"SEDLEY BLANCHARD, Esq., Barrister, &c., Winnipeg." "E. B. WOOD.

To which I received the following reply:—

"WINNIPEG, 18th June, 1881.

"DEAR SIR,—In reply to your letter of yesterday referring to the case of Hogan *vs.* Pitblado *et al.*, I beg to state that (if my memory serves me) no official reporter was present during the trial at the Assizes.

"I understood he was engaged in extending the shorthand notes of other causes tried at the same assizes.

"I have no recollection of having made any objection to his absence.

"I myself took short notes of the evidence, and in the preparation of affidavits I referred to them, so I have never even seen your notes.

"As you are aware, the application in Term was made by Mr. Kennedy, my connection with the case having ceased.

"Under the circumstances I can only say that I have no knowledge whatever of any fact that would justify the charge.

"I am yours very truly,

"Hon. E. B. WOOD, Chief Justice." "SEDLEY BLANCHARD.

I have not written to Mr. Caldwell, nor have I seen him on the subject, but I have been referred to a letter of his referring to this charge, published in the Manitoba *Free Press*, as it appears, soon after the contents of Mr. Clarke's petition were published in the newspapers. I clip it with an editorial sentence of introduction from the *Free Press*:—

A LETTER OF MR. CALDWELL.

As a matter of course, H. J. Clarke's manifesto against Chief Justice Wood is rapidly dissolving into its original element of malice and falsehood under the light of investigation. One more of its fabrications is vividly exposed in the following letter:

"*To the Editor of the Free Press:*

"In the petition against the Chief Justice, it is stated that he prevented the shorthand reporter from taking evidence, special reference being made to a suit which came on at the March Assizes last year.

"I have been the official reporter here since the inauguration of the system of taking shorthand notes for the Court, and I state positively that in no instance, either at the Assize alluded to, or before, or since, have I ever been prevented from taking evidence by the Chief Justice or any one else. On the contrary, I have invariably received from his Lordship, and from all the officers of the Court with whom I have been brought into contact, every facility for my work.

"WINNIPEG, March 21." "W. CALDWELL.

I think this disposes of this charge. But I am not satisfied without proving the utter falsity of the whole charge. How comes Mr. Clarke, who was in no way engaged or interested in this case, to have had a brief made up for him from which he has formulated this accusation, and who made up and handed him that brief? The only reasonable inference is—Manning, McDonald & Co, and their counsel, Mr. Kennedy. (See letters to Mr. Kennedy and remarks on the same in observations on the 9th paragraph of Mr. Clarke's petition.)

Now for the justice of the decision of the Court in judgment, in term, according to law, of Hogan *vs.* Pitblado *et al.* It is because in that the decision is justice according to law that I am persecuted with charges which could only be invented by the malignancy of friends, supported by lies as black as ever came from Erebus. For myself, I shall now say nothing in respect of the case. I have already spoken as a judge of the Court. I have read the evidence and judgment carefully, and I know it is right and just according to law. I have ordered a copy of the evidence, and a copy of my judgment and that of Mr. Justice Dubuc, to be prepared, and they are now before me. An examination of these papers will show whether or not, if a course like the present one of persecuting judges is to be pursued and encouraged by authority, it will not go far to destroy the independence of the Bench and corrupt the very fountains of justice. The vast importance of the subject in a public point of view has induced me to place on record here the evidence and judgments in this case, and to ask of His Excellency in Council a careful examination. Is the decision right on the evidence or is it wrong?

Are Manning, McDonald & Co. and their counsel Mr. Kennedy to be sharply reproved for their conduct in this matter; or are they to be encouraged and commended.

Notes of the evidence taken by the Chief Justice on the trial of Hogan *vs* Pitblado *et al.*, at the Assizes.

8th MARCH, 1880. *Hogan vs. Pitblado et al.*

Mr. Biggs for plaintiff and Mr. Blanchard for defendants.

Declaration.—Special Counts. Pleas.—1. Did not promise. 2. Never indebted. 3. Payment.

1st Count.—6 miles at $1.60 Rockwork and 22c. Earthwork. 2nd Count.—4 miles at $1.50 Rockwork and 25c Earthwork. 3rd Count.—An agreement to enter into a contract. 4th Count.—Common Counts.

JAMES HOGAN, sworn for plaintiff, says:—

I am the Plaintiff. My place of residence was in Halifax. I now reside in Boston. I am a Nova Scotian. I know the defendants. I am best acquainted with the Defendant Grant. In the latter end of March a year ago, I met Grant and Pitblado in Ottawa. I was looking out for a contract. I had hopes of getting a contract from the contractor Ryan. I was acquainted with him. Grant told me to wait, not to take any contract as he and his partners were expecting to get a contract from Government on the Canada Pacific, and they would give me some work. I waited for some time, a week or so. One morning Grant came to me and told me that he and his partners had got a contract and were going to sign it that day, and he told me to go and see the engineer and profile and pick out such a piece of work as I wanted. I did so. I went to the Engineer's office in the Parliament Buildings and saw and examined profile and copied off six miles on tracing papers. I came back to the hotel and brought tracing and showed it to Grant and Pitblado. They told me to make my figures. I did so, and put them on paper and handed it to Grant and Pitblado. My figures were $1.60 for rock and 22 cts. for earth. They said it was a little high on rock. They thought the earth about right. This was on section B. It was from station 461 to 777. But they said: "Come on up to the work, we shall trade." I said: No, I would not—that if I did not arrange with them, I would with Ryan—that before I went up, I wanted the matter definitely settled. Mr. Grant said: "Come on, if we do not trade, that is, arrange, I will pay all costs and expenses." Still I refused, and then Mr. Grant said: "It is all right you can have the contract at your figures"; and he told me "to be upon the work by the 15th April; he said he was that night going to Winnipeg and would return home about the 15th or the last of the month; and he said I had better get up before he left to return back. I then told him I was going to write to Henry Rudge of St. Stevens, in New Brunswick to go in with me He expressed himself pleased at this. I wrote Rudge that night. Rudge telegraphed and wrote me he would go in with me. Rudge met me at Boston, and we both came up here together, and met Mr. Grant in Winnipeg. In the presence of Rudge I recapitulated to Grant the contract I had made with him—6 miles, $1.60 for rock and 22 cts. for earthwork. He said: "That was all right." The next day Mr. Rudge came to me and said he had been talking with Mr. Grant and Grant did not understand that I was to have $1.60 for rock. I then went and saw Grant, as I had heard he was going away, and said to him: "What does this mean Mr. Grant, what have you been saying to Rudge as to the price in the contract?" Grant replied "Oh, Mr. Hogan that will be all right." He remarked that McDonald and Pitblado were against giving more than $1 50; and I said: "Mr. Grant, let us have it straightened before you leave." He said he would meet me at the Grand Central. I went to the hotel, he came there, or I saw him there, but he went upstairs and said nothing to me about the contract. I waited until 10 o'clock, I found he left next morning at 3 o'clock, Pitblado was then here. I went to him. He told me to hold on, McDonald would be up in a short time, and in any event there was a freshet; and the lakes were so high I could not get over them from ice, &c. I waited two or three days and then Rudge came to me and said he did not like the way the thing was working; and I said: "I will quickly settle it." We both went to Pitblado and we each took a chair and sat down to a table at the Grand Central. I said: "Now, Mr. Pitblado, I am going to work or going home. What is the trouble about this work?" Pitblado answered: "The whole trouble is this 10 cents on the rock work. If you will say $1.50 for rock and 25 cents for earth, you can go on when you have a mind to do so—to-morrow morning if you like." I tried to get him to say $1.55, so did Rudge. He finally said: "Leave that to me, I will give it if I can" (referring to the assent of his other partners.) He thought 3 cents on the earthwork would compensate the 10 cents on the rock. I agreed to this. I started for the work that evening. Rudge

was no party to this contract. He was, as I understood, to go in with me. I went the first train for the work. I took 4 or 5 men with me. We went 45 miles by train, then by hand car to Cross Lake, and then on foot to Rat Portage, and thence 8 or 12 miles to my work. The west end of my work comes to within about 8 miles of Rat Portage. I selected a place to build a shanty for headquarters on my contract; commenced building it and had it about half done, when Mr. McDonald came along. He said to me: "This is well for you to pick out the best work. You can't have this work. You have got to go up the line further." He spoke roughly. I replied: "No, Mr. McDonald, I am not going up any further. I am agoing to have the work I have contracted for." He then asked: "What kind of a contract did Grant make with you?" I answered: "Mr. Grant and Pitblado will tell you." He told me then to come down to Rat Portage the next day and he would straighten it out in some way. I answered, "All right; I will be there." He said nothing about the work going on. I went on with the work that day. The next day I went to Rat Portage—leaving the men working, five men. At the Portage I saw Mr. McDonald, but had no conversation with him. I met Grant and had a conversation with him. He said McDonald and Fraser were opposed to letting more than two miles. I said: "That will not do me. I will not have any less than the contract." Grant said: "If I cannot carry it out I will pay you all your expenses, coming here and going home." I said that, Mr. Grant, is very fair of you, but it will not pay me. I said I have made arrangements, and it will put me out much if the arrangements are not carried out. He then went away. I was whittling a stick and thinking. He returned—having, as he said, been fighting with his partners—and said: "I will tell you, Hogan, you can have four miles of that work, and I will see that you shall have something to make up for the odd two miles." I said: "Well, Mr. Grant, all I want is my contract or its equivalent." I agreed to this, and I supposed it was all settled; and next morning I asked Mr. Grant to have an Engineer or a man sent up to lay out the work. Before I left in the morning with my 17 men, I went into the office of the defendants to see the profile of the work and line of railway. I saw it; and Mr. Grant or some one interested went in with me. The four miles was to be commenced, as I understood, at a certain point. I then saw on the profile my four miles marked on the plan as commencing at station, I think, 545, and going, I think, to 710 or thereabouts. It was marked with a pencil mark. My name was written on it in pencil. Either then or just before, Mr. Grant told me that my work commenced at the end of Matheson's. I went up, as I have stated, and expected an engineer or some person to show me where I was to clear. But I did not get any word for a week or several days. In the meantime, I sent word down several times, and I think I went down once to see why a man was not sent up as promised. In the meantime I and my men were building shanties and starting a coal pit to burn coal. At last a man came to me and brought a note to me from the engineer. I produce it, filed marked "A," dated 16th June, ordering work from 525 to 625. I then put my men on the clearing work. I then got another note from the engineer, dated 18th June, 1879. Filed marked "B," "Clear line from 540 to 551, 66 feet." I went on with the work as directed. After this the engineer laid out rock and earthwork, and I commenced it and did work on it. I built a large shanty and blacksmith shop at about station 550. I let it for 18 cents per yard and $1 per yard for rock, which was large boulders, not loose rock. There was about 45,000 yards of earth which I had let at 18 cents, and 300 or 400 yards of rock. I had advanced in establishing these men in shanties, &c., $300 or $400. About this time Mr. Rudge came back. He had been home to New Brunswick. He went away the evening of the day I made the last arrangement with Mr. Grant. In the meantime Grant, Fraser and Pitblado had been away, and Mr. Rudge told me that they had sold out. Rudge told me that, when on his way home, he had signed a contract for two miles. A few days after this, a person came to my work and produced a contract prepared, and represented that he came from the new concern with instructions to get me to execute the contract. I told him to read it. He did so, or a portion of it, until he came to two miles. I told him he need not go on any further, as it was not my agreement. I

stated to him what my contract was. After that, I came to Winnipeg, and met Mr. McDonald, one of the defendant's in the City. He said to me: "You are a nice man to let my work. I can let that work for 18 cents as well as you." I asked him what he meant? He answered: "I mean I do not know you at all, I let Rudge two miles, I know nothing about you." I said to him: "I do not understand this. I dealt with Grant, and I do not know or understand it at all." I left him and went and saw Mr. Grant. I told Mr. Grant my conversation with McDonald in substance. I told him that McDonald said he would take the work from me and that McDonald had said he had never let it to me. Mr. Grant said, although he had sold out, my contract was all right. McDonald would have to carry it out. I then saw Fraser, and arranged to meet him at Grant's house that evening. I met Grant and Fraser that evening. We talked over the whole matter. They advised me to go back and go on with my contract. I went back, though under other circumstances I should have gone home for men. When I reached it, I found that McDonald had relet the work, which I had let to the men and had agreed to give them 20 cents for the earth and $1.40 for the rock, and that they were going on under the contract with him, and repudiated me and the contract with me. It was reported on the work that McDonald had taken all the work from me. I then returned to Winnipeg and saw Mr. Grant, and told him what had been done out on the work. Mr. Grant said: "Surely McDonald has not done that." I asked him to go with me to McDonald. We went. We met McDonald on the street. I introduced the subject, I said I want to see if I can't come to some arrangement about the work. McDonald flew in a passion, and Mr. Grant said: "If I were there," that is—as I understand, on the work, "I would carry out my agreement." We separated without coming to any arrangement. After that I had a talk with Mr. Grant, and he said, all I could do was to bring an action, as he thought, as the contractors who then had the contract would have to be responsible to me, and not he, as he was indemnified. He said he would tell the truth in the matter. I then went to McDonald to see if we could not settle in some way. He told me that from all he knew Grant had made a blunder; and the only thing I could do was to sue—that Grant had got him into one or two losses already and this might be added—that he had $22,000 in his hands, and they, Fraser and Grant, would have to pay it—that he had a writing to that effect. If there was any contract which they had not fully explained, they were responsible for it. I asked him to leave it to arbitration. He said no; he wanted it to come out of Court, so that Fraser and Grant could not say he had not fought it well as they eventually would have to pay. I then sued. I have made an estimate of the damages I have suffered. I produce statement of same:—

Money expended since I came from Ottawa	$ 475 00
Twelve months loss of time	900 00
60,000 yards rock, profit 25 cents	16,000 00
45,000 yards earth, profit 7 cents	3,150 00
20,000 yards earth, profit 5 cents	1,000 00

Cross-examined by Mr. Blanchard:

I could have done the rock work for $1.50. Pitblado heard the terms of the contract. I had all the conversations I have mentioned; nor did I ever state I had not these conversations. Grant never said in Ottawa he, by the terms of the partnership, could not make it (the contract with me) alone, but I think I heard this in Winnipeg. The change in price was made in Winnipeg, with Pitblado. There was nothing said in the contract about clearing. I spoke of it afterwards. My men were paid by McDonald's clerk. I never said to Mr. Blanchard that I never had any conversation with Pitblado on the subject of the contract, that all my conversation was with Mr. Grant.

HENRY RUDGE, sworn for the plaintiff, says:—

I know the plaintiff. On the last of March or 1st of April, 1879, he wrote me saying he had a contract on Canada Pacific Railway to about $300,000, and asked me

if I would go in it with him. I said I would go in with him. I met him at Boston and came to Winnipeg. At Winnipeg, we saw Mr. Grant. Hogan said I was going into contract. Grant said it was all right. Next day Grant said he could not close the contract, as it was an agreement between the partners that no one could let a contract to exceed $1000. Pitblado said the rock was $1.50, and earth 25 cents.

I went into the office at Rat Portage, and McDonald asked: "What contracts do you want?" I pointed out on the plan, and McDonald wrote at the head of each, "Hogan & Rudge." This was about four miles. I thought the thing was settled. The plaintiff went on to the work, and I returned to Winnipeg and saw Fraser about getting up the contract. The two-mile question came up. I said that I would sign for two miles, and the plaintiff for two miles afterwards. I wrote the plaintiff explaining the matter, and that I was going to New Brunswick and should be back at a certain time. I returned to Winnipeg and went out on the work and explained to plaintiff what I had done, but he did not seem to take the meaning—I mean about the contract. He worked on, I think, till October, and then a new contract came to be signed by the new firm. I did not sign it nor did the plaintiff. It is joint, and only for two miles. After Fraser and McDonald came here, I had a conversation with Pitblado and McDonald at the Grand Central. McDonald said it was all right. I had no thought of the six miles being disputed. I thought the dispute referred to $1.60 rock work. A man will get out three yards a day; hauling from 5 to 7 cents —wages $1.50.

DEFENCE.

GEORGE I. GRANT, sworn for defendants, says:

I am one of the defendants. I heard the plaintiff's evidence. I made no arrangement or bargain at Ottawa with the plaintiff. No price was agreed upon. The plaintiff applied for work, and we wanted work done. I met the plaintiff in Winnipeg. I had seen Pitblado. The articles of partnership were signed at Ottawa, and it was a stipulation that one man could not let a contract—two could let to a certain amount. I cannot speak as to the exact terms. Nothing was said to the plaintiff about it in Ottawa. I think I told the plaintiff, in Ottawa, that we could not let a contract in Ottawa, but we must see the work first. I do not remember speaking particularly about a certain number required to concur in the contract at Ottawa. I, after taking the contract, left for Winnipeg. I saw the plaintiff and Rudge at the Grand Central. I saw them together. I told them I had let no contract. There was no agreement made at that time. Pitblado and myself met the plaintiff and Rudge at the Grand Central. The contract was talked over in Winnipeg. It was let in Rat Portage. $1 50 and 25 cents. The length of road was two miles to Hogan and Rudge only, and one mile east, and to Matheson's work west—perhaps not quite a mile. This bargain was made with Rudge by myself, McDonald and Fraser. I do not think rock can be got out for $1.40.

Cross examined.—I saw the plaintiff about ten minutes in Ottawa. Berryman gave me a slip of paper, on which were the figures $1.62 for rock, and 22 earth, as having been made by the plaintiff.

After a careful consideration of what has been said, and an examination of the proofs on the charge of wilfully withholding and perverting evidence on the trial of the cause, and an examination of my notes of the evidence and judgments in Hogan *vs.* Pitblado *et al.*, in which it is alleged that gross and wilful injustice was done, I think His Excellency in Council will agree with me, that it is almost inconceivable that such a wanton, deliberate and gross outrage could be inflicted upon any man. It surpasses the wildest exaggerations of fiction.

JUDGMENT OF THE CHIEF JUSTICE.

In the Queen's Bench.

Hogan *vs.* James M. Pitblado, James H. Fraser, George Grant, Alexander Manning, John J. McDonald and Alexander Shields.

This is an action brought by the plaintiff against the defendants to recover damages for breach of contract.

The declaration consists of:—

1*st Count.*—That in consideration that the plaintiff would do and execute for the defendants the rock excavation and earth excavation on a certain portion of the line of the Canadian Pacific Railway, known as section B, and contained within certain stations planted on the line of the said railway and shown the map and plan thereof, being the distance of six miles from one station to another station, according to the plans and specifications, and in manner and in conformity with which the defendants were bound to execute the same for the Government of Canada, the defendants undertook and promised to pay the plaintiff for the performance and execution of the said work, at and after the rate of one dollar and sixty cents per cubic yard for rock excavation and twenty-two cents per cubic yard for earth excavation; and the plaintiff further averred that, in pursuance of the said agreement, he came from the City of Halifax, in the Province of Nova Scotia to the District of Keewatin, wherein the said works is located and entered upon the execution thereof, and to that end engaged laborers, and built shanties, and made all the necessary preparations to proceed with the prompt and speedy execution of the work, and thereby incurred, laid out and expended large sums of money, and spent much time in about the premises; but the defendants, wrongfully and without any just cause, prevented the plaintiff from proceeding with the said work and dismissed him from the same, and refused to permit him to perform the same, and refused to perform the said agreement in this court mentioned on their part—whereby the plaintiff has lost a good deal of time and sustained great damages and lost large profits which he might have made in the execution of the said work; and has lost the opportunity of taking other contracts which otherwise he might have done.

2*nd Count.*—Similar to the first count, except the quantity of workembraced in the contract is four miles instead of six miles, and the rock work was to be $1.50 per cubic yard and 25 cents per cubic yard for earth work.

3*rd Count.*—Sets out that defendants agreed to enter into a contract for six miles of work on the Canadian Pacific Railway at the rate of $1.60 per cubic yard for rock work, and 22 cents per cubic yard for earth work. The plaintiff averred that in pursuance of the agreement in this count mentioned, he came from the City of Halifax to the place where the said work was to be performed in the District of Keewatin and entered upon the preliminary preparation for the execution of the said work, and employed laborers, built shanties on the said portion of the line of said railway so agreed to be let him by the defendants as aforesaid, and expended and laid out a large amount of money, and spent and lost much time in about the premises in this count mentioned, and in and about the endeavoring to procure and induce the defendants to perform the agreement in this count mentioned on their part, yet the defendants did not nor would perform the said agreement on their part, although the plaintiff was always ready and willing to perform the said agreement on his part of all which the defendant always had notice. On the contrary, the defendants refused to perform the same agreement, and although the plaintiff had entered upon the ground of the said work and had expended the time, labor and money aforesaid in this count mentioned of which the defendants had notice, the defendants put the plaintiff off of the said work and declared that they would not carry out the said agreement on their part—whereby and by means of all and singular the premises, the plaintiff has sustained great damage by reason of the profits he might have made out of the said work, and his thereby having been deprived and prevented of and from taking other contracts which he might otherwise, and would have done.

4*th Count.*—The defendants were indebted to the plaintiff in the sum of twenty thousand dollars for money payable by the defendants to the plaintiff for work and labor done and materials provided by the plaintiff for the defendants at their request and for money paid by the plaintiff for the use of the defendants, and for money

found to be due from the defendants to the plaintiff on accounts stated between them, and the plaintiff claims $30,000.

Pleas 1st.—Except as to the last count did not promise.

2nd.—As to last—never indebted.

3rd.—As to whole declaration—payment, replication, issue on the defendant's pleas.

This cause came on for trial before us with a jury at the last March Assizes, and resulted in a verdict for the plaintiff for $7,000.

In this Trinity term the defendants obtained a rule *nisi*, calling upon the plaintiff to shew cause why the verdict obtained in this cause should not be set aside and a new trial had between the parties, or why the damages assessed should not be reduced to three hundred dollars, on the ground that the verdict is against evidence and the weight of evidence, that it is contrary to the direction of the judge and perverse, and that the defendants were taken by surprise.

Mr. Kennedy moves the rule absolute, and in doing so proposes to read several affidavits in support of the motion which had not been filed or put in on motion for the rule *nisi*, and which were in no way referred to in the rule *nisi*. Mr. Biggs, on behalf of the plaintiff, objected to the reading or putting in of these affidavits, inasmuch as he had no notice of them and no opportunity of answering them The Court ruled that if counsel for the plaintiff objected they could not then be filed or read, but nevertheless the Court would take them and look at them, but that it could not technically give any weight to them as the plaintiff had no opportunity of considering them, or of explaining or answering them.

The argument on the rule *nisi* then proceeded. Mr. Biggs showed cause, and Mr. Kennedy supported the rule.

As to the first ground in the rule I may say, at the outset, that I do not think the verdict is against law and evidence; on the contrary, I think the plaintiff was entitled to a verdict in law according to the evidence.

I do not think there is the slightest ground for saying the verdict is against the weight of evidence, neither was the verdict contrary to the direction of the Judge before whom the cause was tried, and there is no ground nor was any suggested on the argument for saying that the verdict is perverse; had it been for the defendants it might aptly be said to be perverse.

The rule alleges as a ground for new trial, surprise.

Outside of the affidavits which counsel for the defendants proposed to read, as I have mentioned, I fail to find any ground for surprise, except at the amount at which the damages are assessed by the jury, and even looking at the affidavits I cannot see any legitimate ground of surprise. The attorneys of the defendants were, on the 27th day of November, served with the plaintiff's declaration in which his causes of action are particularly set out, except in the common courts, in respect of which the particulars of the causes thereunder might have been had for the asking. It is idle to say that with such a declaration, particularly under the narrative which the plaintiff has given in his evidence, the defendants did not know what they had to meet, and what evidence on their part would be necessary. They say now that they want the evidence of Pitblado.

In the affidavit on file in this cause sworn to on the 26th of December, 1879, and filed on the 27th of the same December, of Mr. Blanchard, the attorney for the defendants, he swears "that the defendants pleaded to the plaintiff's declaration herein on the twenty-fourth day of December instant, and thereupon the plaintiff on the said day joined issue herein and gave notice of trial for the thirtieth day of December instant, at Chambers in Winnipeg aforesaid."

He then goes on to say that it was understood between him and the attorney of the plaintiff that this cause should not be tried till at the next Assizes, which would be in the month of March, otherwise he would have required a jury in his pleas. He then goes on:

"I am advised and believe that the evidence of the above named James M. Pitblado, whose usual place of residence is at Truro, in the Province of Nova Scotia,

is material, and that he is a necessary witness on behalf of the defendants herein, and it will be impossible to procure his presence at the said trial before the said next Assizes, or to procure his evidence to be taken to be used therein before them.

It is true Mr. Blanchard makes an affidavit, one of those not filed, in which he says, from conversations which he had subsequently with the plaintiff, he did not think the evidence of Pitblado material, and hence he did not have him present. Even assuming I can look at his affidavit for the purpose of making out surprise (a thing I think I cannot do for the plaintiff, if he had notice of the affidavit, might deny or explain it away altogether). I do not think in the face of the pleadings anything that the plaintiff might say to him of this kind could be construed into surprise, such surprise as a Court can take cognizance of. The plaintiff, in his evidence on cross-examination, in answer to Mr. Blanchard's questions, pointing probably to this very matter, says "Pitblado heard the terms of the contract. I had all the conversations I have mentioned; nor did I ever state that I had not those conversations." If in his evidence on the trial, the plaintiff, in saying he had certain conversations with Pitblado, stated that which he had previously stated to Mr. Blanchard was not the fact, why did not Mr. Blanchard go into the witness box and contradict him? He might as properly do that then as now, to make an affidavit contradicting the plaintiff, with or without the affidavit. I fail to see any surprise, as to the evidence of the plaintiff, in respect to the part Pitblado had in the contracts set out in the declaration.

It may be said that it was a surprise that the defendant, John J. McDonald, was not present at the trial to give evidence on behalf of the defendants, from the affidavit of John J. McDonald proposed to be read by counsel for the defendants, on moving the rule absolute, it appears that he thought it to his interest to absent himself from the trial and be in Ontario. It is superfluous to say that he offers no valid excuse whatever for not being present at the trial. It is too much to expect that Courts, for such reasons as he gives, can grant a new trial, to see what would be the effect of his evidence upon issues raised, when he had every opportunity of being present and giving his evidence. Courts cannot permit experiments of this kind.

Perhaps a solution of the reason John J. McDonald was not present at the trial may be found in the plaintiff's evidence. He says: "I found that McDonald had re-let the work which I had let to the men, and had agreed to give them 20 cents for the earth and $1.40 for the rock, and that they were going on under the contract with him, and repudiated me and the contract with me. It was reported on the work that McDonald had taken all the work from me. I then returned to Winnipeg and saw Mr. Grant and told him what had been done on the work. Mr. Grant said: 'Surely McDonald has not done that.' I asked him to go with me to McDonald. He went, we met McDonald on the street. I introduced the subject. I said I want to see if we cannot come to some arrangement about the work. McDonald flew into a passion, and Mr. Grant said: 'If I were there (that is, as I understood, on the work.) I would carry out my agreement.' We separated without coming to any arrangement. After that I had a talk with Mr. Grant, and he said all I could do was to bring an action, as he thought as the contractors who then had the contract would have to be responsible to me, and he would not, as he was indemnified. He would tell the truth in the matter. I then went to McDonald to see if we could not settle in some way. He told me that from all he knew, Grant had made a blunder—that Grant had got him into one or two losses already, and this might be added—that he had $22,000 in his hands, and they (meaning Fraser & Grant) would have to pay it—that he had a writing to that effect. If there was any contract which they had not fully explained they were responsible for it. I asked him to leave it to arbitration. He said, 'No,' he wanted it to come out of court, so that Fraser & Grant could not say that he had not fought it well, as they ultimately would have to pay. I then sued."

Mr. Grant, although examined on the trial for the defendants, is not asked nor does he say a word about all this. In fact, Grant does not contradict the plaintiff in any material part of his evidence, which is, in many of its parts, corroborated by the evidence of Mr. Rudge.

I have no doubt of the substantial accuracy of the whole of the plaintiff's evidence. It had in Court, and has now when I read it over, the air and impress of sincerity and truthfulness. At all events, if the defendants could contradict or controvert the plaintiff's evidence, and desired to do so, they had abundance of time after issue was joined after it was understood the case would come on for trial at the March Assizes—more than two months to prepare and to be present at the trial and give their evidence—and not having done so they must abide the consequences.

On the whole, I am disposed to think that I cannot say the verdict is against law or evidence; or is contrary to the direction of the judge before whom the cause was tried; or is perverse; or that the defendants were taken by surprise.

The last ground of the rule remains, that the damages are excessive.

Regarding the evidence, and all the circumstances in evidence disclosed on the trial, I am not surprised at the amount of damages assessed by the jury. From the evidence, it does not appear that the plaintiff was fairly dealt with by the defendants. The plaintiff had spent well nigh a year in and about the contract; he had expended considerable money and labor in preparations for executing the work, without any compensation whatever; he was put off the contract, and the work taken out of his hands, and for what reason? for no imaginable reason, except that the defendants saw, or fancied they saw, that by the prices at which he was to do the work, he would make a large profit. None other can be suggested.

I directed the jury, "that, as a rule, a plaintiff could not claim as compensation, for the breach of a contract, profits which the plaintiff might have made if the defendant had not made a breach of his contract; nevertheless, there were many cases in which the profit to be made by the bargain is the only thing in contemplation at the time the contract was made, and in such cases it was proper to take that profit into consideration in estimating damages. In the case before them, the plaintiff undertook to execute certain work for the defendants at certain prices (if they found there was a contract in respect to which, on the evidence, there seemed to be no doubt), the profit and advantages to flow to the plaintiff, as the direct and immediate fruits of the contract, were part and parcel of the contract itself; such a case as the plaintiff's does not come under that class of cases, in which the profits and gains derivable from a contract are uniformly withdrawn from a jury as being too remote, uncertain, contingent and speculative, as not the natural and reasonable consequence of the defendant's breach of contract; on the contrary, in the plaintiff's case the profits and gains constitute a portion of the essence of the stipulations, the right to which cannot be questioned.

"The question is—and it is a most serious question—are the jury satisfied that by reason of the conduct of the defendants in putting the plaintiff off the work, and terminating the contract, the plaintiff was thereby deprived of profits and gains? No loose evidence will justify them in giving damages on this footing. The jury must be satisfied beyond all reasonable doubt, that the plaintiff has been deprived of such profits and gains, before they can allow anything to the plaintiff on this score.

"If they find that the contract was made, that in pursuance of that contract the plaintiff entered upon the execution of the work, and that he was, without any excuse whatever, except that given by McDonald, when he said to the plaintiff: 'You are a nice man to let any work; I can let that work for 18 cts. as well as you; I mean I do not know you at all'—put off the work, and out of the contract, they were entitled to give to the plaintiff the direct, natural and reasonable damages, which, upon the whole evidence, they should think the plaintiff had sustained by reason of the wrongful conduct of the defendants."

No exception was taken to the charge to the jury; nor was objection made to it on the motion for the rule *nisi*; nor is it to be found in the rule *nisi*, which, after considerable discussion, counsel for defendants were permitted to frame, as it suited him, although not by the approbation of the Court; nor was any exception taken to the charge on the argument, or to the way and manner in which the case was left to the jury.

The jury assessed the damages at $7,000.

On going over the evidence carefully, in the light of subsequent events, although at the time I thought the damages reasonable, I am distrustful as to whether they may not be too much. It is true, excluding profits altogether, there was about a year's time spent by the plaintiff on and about the work, and considerable money necessarily laid out for his personal expenses, and for the purposes of his contract, in building shanties, &c., and in supplies and outfit for the work; yet I think the estimate of $7,000 for these too much.

I think some allowance must have been made by the jury for profits on the work; and I myself am in doubt how much, if any, that should be.

The plaintiff, as was stated on the agreement, immediately after the trial went home to the East, and it would be difficult for him to return to this Province to attend another trial of this cause. I believe this to be the fact.

Under all the circumstances, I think the plaintiff must reduce his verdict to $4,000, or a new trial must be granted upon payment of costs.

If the attorneys for the plaintiff, within one week, file with the Clerk of the Courts consent in writing, signed by them, to reduce the verdict to $4,000, then the rule *nisi* is to be discharged without costs. The attorneys failing to do this, the rule *nisi* for a new trial is to be absolute on payment of costs.

JUDGMENT OF MR. JUSTICE DUBUC.

"*Trinity Term*, 1880.

"Hogan *vs.* Pitblado, *et al.*

"I do not think that the verdict should be set aside because the plaintiff is certainly entitled to some damages for his loss of time and expenses incurred in building shanties, and working on the excavation. His loss of time on the line, and waiting in Winnipeg alone would amount to a fair sum. He should also be entitled to be compensated for profit he has lost in having his contract taken from him. Taking everything into consideration, we thought that $4,000 would be a fair compensation. If the plaintiff thinks it is not enough, he may have a new trial."

CHAPTER XI.

Observations on the Eleventh Paragraph of Mr. Clarke's Petition.

"That said Hon. E. B. Wood, in his his character of Judge of the County Court of Manitoba, illegally and deliberately caused to be summoned McDonald *et al.*, in the case of McAdams *vs.* McDonald, *et al.*, at 11 o'clock in the forenoon of a certain day of October, 1879, and in defiance of all law and usage gave judgment against the defendants, and caused an execution to be issued against said defendants before one o'clock in the afternoon of same day, and the bailiff of the County Court was in the act of removing the defendant's safe from their office within three hours after the pretended service of the summons to appear, thereby very seriously damaging the credit and standing of the firm of McDonald, Manning & Co., who were and are contractors for section 16 of the Canadian Pacific Railway."

I am charged, in this paragraph, while acting as Judge of the County Court for the County of Selkirk, "of illegally and deliberately causing to be summoned, Manning, McDonald & Co., at 11 o'clock in the forenoon of a certain day in October, 1879, and in defiance of all law and usage, gave judgment against the defendants, and caused an execution to issue against the said defendants before one o'clock in the afternoon of the same day; and the bailiff of the County Court was in the Act of removing the defendants' safe from their office within three hours after the pretended service of the summons to appear—thereby, very seriously damaging the credit and standing of the firm of Manning, McDonald & Co., who were and are contractors for the construction of section 16 of the Canadian Pacific Railway."

Notwithstanding Mr. Clarke's assertions to the contrary, there is nothing illegal or contrary to usage in the whole of this paragraph. By the County Court's Act, passed 25th June, 1879, 42 Vic., Chap. 1, Sec. 62, Consolidated Statutes of Manitoba, Chap. 34, Sec. 62, the latter part of the Section reads thus:—"And on application, a Judge in Chambers may, with or without notice to the opposite party, as he shall see fit, in a proper case being, in his judgment, made therefor by the plaintiff or the defendant, order that any action, issue or matter pending in any County Court, shall be tried or heard and determined by a Judge in Chambers at any time or place he shall appoint for that purpose; at which time, or at such time and place as the same may be adjourned or postponed to, the said cause, issue, or matter shall be tried, heard and determined as in any ordinary trial or other disposition of the same Court, and have the same force and effect as if done at a regular sitting of the said Court."

Prior to the County Courts Act of 1879 as early as 1876 this has been the statutory law of the County Court in this Province; and it has proved itself, as matters are in this country, a most useful and salutory provision; and this is the first case in which I have ever heard any exceptions taken to its operation.

Under this Statute, it is quite competent for a party, plaintiff or defendant, in a cause in the County Court, to apply *ex parte* to a Judge, in the morning, for an order for the trial of the cause at any hour on that day, or at any hour on any future day; and quite competent for the Judge to make the order; and at the time appointed, if the order has been served, to try, hear and determine the cause, issue or matter. But the Legislature, in passing the Statute, assumed that Judges, as well as other men, possess, and in their judicial action would exercise, common sense; and, I think, in this Province the Legislature has not been disappointed in that assumption. Under the Statute, I have never yet made an order for the trial of a cause on the same day—I give two, three or four days or more, depending upon the whereabouts of the parties and the apparent ease or difficulty in procuring the attendances of witnesses; and if at the time appointed the parties are not ready, I adjourn the case to a future day, as is, in my opinion, demanded by the exigency of the circumstances and the justice of the whole case; and, in so far as I know, this has been the practice of my brother judges. It is said: "There should be reason in all things;" and I am of that opinion. I think in the cases in which orders are made under the Statute I have cited, the party to the action, whether plaintiff or defendant, should have reasonable notice, consistent with the spirit of precipitancy and expedition implied in the enactment. I am now prepared, not in its letter, but in its spirit, to discuss the charge made against me; for, although it is put by Mr. Clarke, the proceedings are strictly within the Statute, yet it would be, on my part, a great abuse of discretionary power, and a violation of the spirit of the Statute, wilfully and deliberately to do what I am charged with.

On examining the papers (and before examining them, I had not the most distant remembrance of the case; or any of the circumstances), I find a writ of summons in the County Court of Selkirk, issued on the 7th day of October, 1879, at the suit of D. C. Black against John James McDonald, Alexander Manning, Peter McLaren, James Shields and John Isbister, on which is an endorsement of claim by the plaintiff—"To amount due the plaintiff for labor performed on section 16, C. P. Ry. under D. C. Archibald and C. S. Archibald, $25.55." To this writ of summons, I find attached an order made by myself in these words:—

"D. C. Black, plaintiff, *vs.* J. J. McDonald, Alexander Manning, Peter McLaren, James Shields and John Isbister Defendants.

"Upon the hearing of the plaintiff, I do order that the defendants do appear before me at Chambers, in the Court House, in the City of Winnipeg, on the ninth day of October instant, at the hour of eleven o'clock, a.m, at which time and place I shall proceed to hear and try this cause "pursuant to the Statute—of which the plaintiff and the defendants are to take notice, and to be present with their witnesses, respectively. Dated at Chambers, at the Court House, in the City of Winnipeg, this 7th day of October, 1879. Signed, E. B. Wood, C. J."

It appears from the papers, by affidavit of the bailiff attached to the order and writ of summons, that the bailiff did, on the ninth day of October, 1879, personally serve copies of the writ and judge's order, with the the warnings, &c.—"by delivering to and leaving the same with John Shields, one of the said defendants (as it is in the affidavit alleged), at the Canadian Pacific Hotel in the City of Winnipeg,—the rest of the defendants (as he was informed and believed) being without the jurisdiction of the Court." I have no recollection of any of the incidents of the trials, except as my memory is refreshed from the papers, but Mr. Marston, the Clerk of the Court, seems to have quite a distinct remembrance of all that occurred.

According to his account of the matter, I postponed the case till all the other cases that were before me were disposed of, and at about 12 o'clock, noon, I took on this case; and that it was represented to me by him and the bailiff that one of the defendants had been personally served at not later than eight o'clock in the morning, and as the plaintiff, a poor and distressed man, was there waiting in Court, I finally, at the last moment, took the case on. As I said before, personally I have no recollection of the matter. How could I have, in the hundreds of cases almost then daily coming before me? In the case of partnership companies doing business in Manitoba, some of the members of whom are out of the jurisdiction, I had been under the County Courts Act, in habit of holding, in the County Court, that service upon one member within the jurisdiction was good service on all without the jurisdiction—one being the agent of all—and I now so hold. I give my notes of the proceedings and evidence which are fyled away with the papers in the case.

OCTOBER 9th, 1879.

"D. C. Black *v* McDonald *et al.*"

"In the County Court of Selkirk, summons and order served on the 9th instant, claim for 24 days work."

"DUNCAN C. BLACK sworn for himself says:—I live in the County of Gray, Ontario, I worked on the Thunder Bay contract under Purcell, Ryan, Marks and Megantic. I commenced work there in May—worked there until about the 23rd September last. I then left and came through on Contract B., which I understood was under Fraser, Manning & Co. I went to a man who was represented as having the management of the work, by the name of D. C. Archibald. I was coming up to Winnipeg, and on my way stopped at Archibald's camp over night. Archibald asked me to go to work on the railway, on the section. He said he had two and a-half miles to do. He said he would give $1.50 per day, out of which board was to come. He said the Government contractors would send along and pay the men. I worked for him twenty-four days. I then left. Archibald took the board out of my wages and gave me the memorandum produced, showing the balance due me. He told me to take memorandum to the office at Rat Portage and the Government contractor would pay me. There was due $25 55. I went to the Rat Portage, which is fifty miles from where I worked, and presented the bill to a man of the name of Baker, who was a clerk in the office. He said the paymaster was away to Winnipeg and would not be back till Wednesday. It was then on a Saturday. I stayed over till Monday morning, and started to work for the Company on Monday morning. I was paid by the walking boss. I wanted to work till the pay boss would come and did not wish to run in debt for my board. The paymaster returned on Wednesday. I presented him the memorandum and he said he could not pay it till the defendant McDonald came from Winnipeg by the lake, who he said had the money. I waited until next day. On that day I went again into the office and the paymaster told me that I would have to see McDonald, the contractor. On that same day I saw McDonald in his office, and I asked him for the money. He said he would not pay it, that he believed Archibald was in his debt. So I left. Since I have been here I have seen McDonald in Winnipeg, and I asked him if he was going to pay me. He said he would not pay me. He said he had told me he would not pay it at Rat Portage. I know that defendants have on a like memorandum paid claims since they refused to pay me. I

have not a cent of money. What I earned at Thunder Bay I sent home to my family. I am here without anything to help myself with."

"No one appearing for the defendants, I give judgment against the defendants for the amount claimed, $25.55.

"E. B. W., C.J."

It is needless for me to say that except a case is made before me for the purpose of the staying of an execution, I have nothing to say about the issue of execution on a judgment in any case. That is regulated by Statute, and the execution is issued, not by me nor at my order, but by the Clerk of the Court, and everybody ought to know that the bailiff must execute the writ of execution according to the Statute, and according to law. I had no knowledge of either the issue of the writ of execution by the clerk and delivery to the bailiff, or of the action of the bailiff thereunder till in the afternoon or evening of the 9th of October, the same day I tried the cause, when Mr. Bain, of the law firm of Bain and Blanchard, applied to me to open the case and rehear the case, on the ground that none of the defendants had been served with the writ of summons or with the order for Speedy Trial. I was astonished; and from this time I have a distinct recollection of the subsequent events. I at once ordered proceedings to be stayed and the cause to be opened for re-hearing the next morning, the 10th of October. On the next morning, on the re-hearing of the case, Mr. Bain appeared as counsel for the defendants, and Mr. John J. McDonald, one of the defendants, was sworn as a witness for the defendants, and proved that "John Shields" on whom the baliff swore he had served the writ of summons and order of the Judge for "Speedy Trial" as one of the defendants, was not one of the defendants, nor was he a member of the firm of contractors at all; that he was a son of one of the defendants whose name was erroneously put in the writ and proceedings as "James Shields" instead of "Alexander Shields," and that the said "John Shields" was only book-keeper or accountant for the defendants, and had left Winnipeg for Rat Portage by the early train on the morning of the 9th of October; and it appeared he must have been served just as he was going to the train on that morning; and that a knowledge of the service of the writ of summons and order for "Speedy Trial" on him had never, in any way, come to the defendants. And he further went on to prove that the debt claimed was not the debt of the defendants, but of Archibald, the sub-contractor. After hearing Mr. McDonald's evidence, and looking at the papers in the cause which seemed to be open to all the objections advanced, I said, in substance, that 'I was not prepared to express, nor was it necessary I should express, any decided opinion on the ground of the defendants ultimate liability for a debt of labor performed on their contract and which they had had the benefit of, through the procurement of Mr. Archibald, but I might say that I was inclined to take a view different from that expressed by counsel for the defendants." (See a judgment on this point subsequently given by me in Bell *vs.* Ryan, set out in observations on 9th paragraph of Mr. Clark's petition.) However, that might be, the judgment in this cause and all subsequent proceedings must be set aside, and judgment of non-suit entered against the plaintiff on the ground that the writ of summons and order for "Speedy Trial" were not served upon any one of the defendants, and the debt, as the defendants contended, is not their debt but of Archibald. The plaintiff may, of course, bring a fresh action, but I suppose he will not be able to do so, he will have enough to do to pay the costs of this action, I sincerely pity the situation of this poor man in this matter, but it is not in my power to help him."

I at the time, endorsed the substance of these remarks on the papers—not one word of objection was made as to the shortness of time between the service of the writ and order and the hearing of the cause, nor any allusion to it whatever; but the objection was that the cause had been tried without the defendants having any notice of it at all. I think myself, now, that notice from 8 o'clock in the morning to 11 or 12 of the same day, under ordinary circumstances is not reasonable; and it may have been considered, and probably was considered, that, in the case of these defendants, it was for their advantage and convenience that a course against them in which they

were necessary witnesses for themselves, and in which there were no complications, should be brought to trial as speedly as possible, in order that they need not be detained in town. I can conjecture none other. But in all such cases if the parties appear, and either of them is not ready, an adjournment takes place as a matter of course. But no objection of that kind was ever made or suggested in this case by the defendants or their counsel to me or before me; nor did I ever hear any such objection until I learned it from Mr. Clarke's petition. The question arises, how did Mr. Clarke get hold of this matter? The mistake in the style of the cause and inaccuracy in the statement of all its incidents and history, prove that he never derived his lying story from the records of the Court, or obtained it from the solicitors of the defendants, Messrs. Bain and Blanchard. From whom did it come then? The inference is from Manning, McDonald & Co., probably from Mr. John J. McDonald, the chief manager of the company on their works on their contract. Hence the reticence of their solictor and themselves on the subject of my letter to Mr. Kennedy already set out (see letter to Mr. Kennedy, and remarks thereon, under observations on 9th paragraph of Mr. Clarke's petition.) One would think that Manning, McDonald & Co. would have been content to let this action of Black *vs.* McDonald *et al.* rest in silence, a poor laboring man was technically deprived by them of $25.55, whose labor had been expended on works for which they had been estimated and paid by the Crown, and it would be singular indeed if poor Black's is an isolated case. One would think that they might have been content with their success; not so, they must raise a charge against a judge for no other imaginable reason than that he expressed an opinion, which they supposed, as it seems, if carried into action, might be prejudicial to their policy and to their interest. They have been the occasion of cause of the full exposition of the case of Black *vs.* McDonald *et al*, I hope they are satisfied.

Quid non mortalia pectora cogis
Auri sacra fames.

These are facts of the case misnamed in Mr. Clarke's petition of McAdams *v.* McDonald *et al.* How any one can conceive anything in them censorious on the judge is to me incomprehensible.

Mr. Marston, the Clerk of the Court, has written the subjoined letter in explanation of the facts of the case, based on the records in his office, and on his memory of the occurrences connected with it.

WINNIPEG, 22nd July, 1881.

SIR,—I have been requested by you to enquire and search in my office respecting a case in October, 1879, of McAdams against McDonald *et al* in the County Court for Selkirk, in which you say you are charged with having made an order for the trial of the cause on one day, and on the same day trying the cause, giving judgment and causing an execution to be issued and the defendant's property seized before one o'clock. I have looked and searched through all the cases in my office which in all amount to 6,100, but I can find no trace of any such cause, but I do find a case of Black against McDonald *et al.* which, on reference to Messrs. Bain and Blanchard, the then solicitors for the defendants, I am informed, and I believe, in fact, I have no doubt is the case referred to.

In the case of Black against McDonald *et al.*, the summons was issued and the order of the Chief Justice for the trial of the cause made for the 9th day of October, at 11 o'clock, but were issued and made on the 7th day of October, 1879. The claim endorsed upon the writ is for labor performed on Section B, of the Canadian Pacific Railway, under foremen D. C. Archibald and C. S. Archibald for $25.55.

On the 9th of October, 1879, the service by the bailiff of the summons and the order of the Chief Justice was returned before him at eleven o'clock in the forenoon; as no one appeared for the defendants the matter stood over until the rest of the business in Chambers was disposed of.

At about 12 o'clock the case was taken on. It appeared by the affidavit of the bailiff that he had served the writ and order that day, but I represented to the Chief

Justice, as the fact was, that they were served at about eight o'clock in the morning, I supposed, and so represented that the service had been personal on one of the defendants. The Chief Justice accordingly heard the cause and gave judgment against the defendants for $25.55; but had no direction, as is never the case (except under special circumstances), as to the issue of execution; but the Court, by me its clerk, issues execution in due course as a matter of course. In the afternoon of that day I issued execution and gave it to the bailiff as it was my duty to do. Under the execution the bailiff went to the office, in the City, of the defendants and demanded payment; no one was in the office but a clerk, who said he had no orders to pay it; the bailiff then said: "I must seize this safe then," and he spoke of removing it, if a receipt bond were not given for its forthcoming. The clerk then asked the bailiff to wait a few minutes and he stepped across the street to the office of Bain & Blanchard, and Mr. Bain returned with him and told the bailiff that he would be responsible for the forthcoming of the safe, and said to the bailiff that there was a mistake about the matter, and that he would at once apply to have the judgment set aside.

On the application of Mr. Bain, on the ground that none of the defendants had been served with summons or order, the Chief Justice opened the hearing of the cause; and upon taking the evidence of Mr. John J. McDonald, the leading member of the firm of the defendants, and it appearing that none of the defendants had in fact been served with a writ of summons or with the judge's order, non-suited the plaintiff and endorsed on the papers these words, "case opened and plaintiff non-suited on ground that writ of summons and judge's order were not served on any one of the defendants, and the debt is the debt of Archibald, not of the defendants. 10th October, 1879. E. B. Wood, C. J."

On the rehearing, it turned out that the bailiff had served the papers on "John Shields," a son of "Alexander Shields," who was not a party defendant at all; this error and mistake were not observed by the Chief Justice when he tried the cause on the 9th of October, nor by myself, nor by the bailiff; it was altogether an oversight, and so fully explained to Mr. Bain, counsel for the defendants, and to Mr. John J. McDonald, one of the defendants at the rehearing next day, and regret expressed by the Chief Justice that the error had escaped his observation. With the greatest care mistakes of this kind often occur, but when pointed out or detected are always promptly corrected.

I have the honor to be, Sir, your obedient servant,

ED. MARSTON, C.C.C. of Selkirk.

Hon. Chief Justice.

CHAPTER XII.

Observations on the Twelfth Paragraph of Mr. Clarke's Petition.

"That said Hon. E. B. Wood has heretofore been charged by the Government of Manitoba with degrading the administration of justice by his unseemly conduct and gross exhibition of intemperance while on the Circuit as Judge of the County Court, on the road, at Portage la Prairie; that the charge, hereby referred to, was solemnly made by the Lieutenant-Governor in Council of the said Province, and was duly forwarded to the Minister of Justice of Canada." (*Infandum Regina jubes renovare dolorem.*)

The allegation in this paragraph of the petition is, that I have heretofore been charged by the Government of Manitoba with intemperance on an occasion of my being on Circuit, in holding the County Court at Portage la Prairie.

It is quite true that this charge was made against me by the Executive Government of Manitoba.

It is now well nigh five years since the occurrence is said to have taken place. I was promptly furnished with the charge and put on my defence by the Executive Government of Canada; and a full defence and explanation were then made, with

which His Excellency Lord Dufferin, the Governor General in Council, professed to be satisfied; and the further discussion or consideration of the matter was, as I understood from the official correspondence, closed.

It would appear to me, therefore, that, it is not intended that I should be called upon to enter on the defence of this charge, *de novo*, until I am more directly required by His Excellency in Council so to do.

I, therefore, forebear, at present, from making any further observations on this twelfth paragraph of Mr. Clarke's petition.

CHAPTER XIII.

Observations on the Thirteenth Paragraph of Mr. Clarke's Petition.

"That by the aforesaid acts of injustice, conspiracy, partiality and arbitrariness, by a record in the custody of the Crown office, and a record of the Court, in a very important and serious criminal proceeding, on which the life and liberty of the parties implicated might depend, and by the corrupt preparation or packing of the petit jury list to try men for murder, and by his degradation of the administration of justice, the said Hon. E. B. Wood has completely destroyed all confidence and respect, in his regard, and that he has rendered himself entirely unworthy of exercising any longer the honorable, sacred and august functions of the Chief Justice of the Court of Queen's Bench of the Province of Manitoba."

From the fact of the explicit denial and disapproval by records and documents transmitted, of all charges of acts of injustice, conspiracy, partiality or arbitrariness; of changing or altering records, except in the outlawry case of Riel, the amendment of the *writ of exigent* and the *writ cum proclamatione*, at the time and in the manner described, which was a proper act, and in no way affected Riel prejudicially.

From the fact of the emphatic denial, and, under the circumstances, impossibility of any "packing" the jury panel in the Queen *vs.* Lepine;

From the fact that all the judgments and decisions of the Courts, in all controverted cases and matters, have been delivered in writing, with the grounds and reasons fully stated, all of which are of record in the Court, and all are *prima facie* right and just according to law;

From the fact of the complete refutation and disapproval of meddling in politics and with political parties in addresses to the grand jurors, by the addresses to the grand jurors and other documents transmitted;

From the fact that the accusation against me that I said in my addresses to the grand jury at the Spring Assizes of 1880, "I had no confidence in the oath of the French native population of the Province," is, by the charge itself to the grand jury, demonstrated to be an unmitigated falsehood;

From the fact that the allegation in the petition, that suitors have no confidence in the administration of justice in the Courts of the Province over which I preside, is disproved by the fact that not one person, having had, in any way, any connection with any legal business in this Province, either professionally or otherwise (except Mr. Clarke) has joined in the petition; the petition itself thereby evidencing in the strongest manner possible its utter falsity;

From the fact, as it is proved by the papers transmitted, that all persons are fearlessly placed on an equality, without favor or affection, before the Courts, and even-handed justice, according to law, dealt out to all;

From the fact that the reckless professional delinquent is sternly rebuked only in the furtherance of justice, and then only in the interests of his client, and for the suitor and for his protection;

From the fact that strict and exact justice was dealt out to Manning, McDonald & Co., Government railway contractors, in Sinclair *v.* Manning, McDonald & Co., although they tried hard, by swearing and otherwise, to baffle the ends of justice, and

only exposed themselves in the end, by appeal, to the newspapers, to infamy and disgrace;

From the fact that, although powerful influence was on the one side, justice was administered according to law, in the case of Hogan *v.* Pitblado *et al.*, as the evidence and judgments in the case, and the letters of Mr. Blanchard and Mr. Caldwell transmitted, fully demonstrate;

From the fact of the accusations in the case of McAdams *v.* McDonald *et al.* (should be Black *v.* McDonald *et al.*), are exposed by the record of the Court and incontrovertible evidence, as being unfounded and most wickedly false and malicious; and finally;

From the fact that there is not one solitary statement of truth in the whole petition—not one statement of fact but has been shown by incontestible evidence to be maliciously false—not one imputation but has been shown to have proceeded from persons destitute of not only the plainest principle of honor, truth and manliness, but even of the common decencies of life—from persons actuated by the worst and most malignant and odious passions of human nature—envy, hatred and malice and all uncharitableness—and from the fact that the petition is not the petition of those purporting to have subscribed it—is subscribed by no one (except Mr. Clarke) who ever has been connected with any legal business before the Courts in the Province—is a forgery, is a cheat and fraud—from the fact that it affects not me alone, but is an indirect assault upon the whole judiciary of Canada—by all these considerations, I call upon and I implore His Excellency in Council to do justice in the premises, to vindicate the majesty of right and truth! to cause to be erased from the records of the State papers and from both Houses of Parliament this infamous petition and all traces of it—to "stamp out" "this vile slander."

CHAPTER XIV.

Obesrvations on the Fourteenth Paragraph of Mr. Clarke's Petition.

"Your petitioners declare, and they pray you to believe, that it is most painful to them to be obliged, in the interests of justice to adopt this mode of proceeding, as it must be always very painful to British subjects to acknowledge, much more expose, the fact there is corruption on the Bench. The suitors, members of the Bar and people of the Province of Manitoba know that, and yet they have been deterred from preferring charges for fear of the vengeance of said Hon. E. B. Wood, Chief Justice of the Court of Queen's Bench for the Province of Manitoba, should he succeed in escaping the charges made against him. The facts aforesaid, if they be not within the personal knowledge of your petitioners, are most of them of public notoriety, and have come to the knowledge of your petitioners in such a manner as to render them worthy of credit and belief.

"That your petitioners are in a position to prove that all facts and complaints above set forth are susceptible of undeniable proof.

"Wherefore, your petitioners pray your honorable House to take this their petition into favorable consideration, and deal therewith in conformity to law and justice, and the interests of the pure administration of justice and public service.

"And your petitioners as in duty bound will ever pray."

This paragraph is the "unkindest cut of all." We are told, and Mr. Clarke actually prays it may be believed, that "it is most painful to him to be obliged, in the interests of justice, to adopt this mode of proceeding; as it must be always very painful to British subjects to acknowledge, much more to express the fact, that there is corruption on the Bench." He stands forth, regardless of consequences, as the self-constituted champion of the poor and timid suitors and of the trembling and truculent Bar of Manitoba, all of whom are afraid to speak, on account of the vengeance of the Chief Justice!

This makes his character complete. It reminds me of the invective of Lord Macaulay on Barère, when assured that Barère always had a fervent and constant zeal for religion. "Whatsoever things are false, whatsoever things are dishonest, whatsoever things are unjust, whatsoever things are impure, whatsoever things are hateful, whatsoever things are of evil report, if there be any vice, and if there be any infamy—all these things we know are blended in" Clarke.

But one thing was wanting; that he has himself supplied. When to such an assemblage of qualities is added a profession of pain at an exhibition of himself, as a vile calumniator, and a profession of a sincere concern for the purity of the administration of justice, and proclaims himself a voluntary and unsolicited champion of timid suitors and a trembling Bar, the effect becomes overpowering. One is wrapped in admiration and sinks under the contemplation of such exquisite and manifold perfection!—Is lost in amazement at such an exemplification of patriotism and of disinterested benevolence, of love of justice and right, of hatred of injustice and wrong!

The exposure of public peculation under the pretence of the public service, of private robbery under the guise of criminal justice, of the apostacy of faith at the bidding of lust, of betrayal of friends, the abandonment of a wife; the seduction of a woman, the mother of many children; the breaking up of a once happy family and home; in short, the exposition of a life which is but one unbroken plane, replete with every vice, stained with every wickedness, and black with every infamy, unlighted by a single ray of virtue (see Clarke's character under observations, paragraph 3)—can be a pleasure to no one. But when a man with such a character challenges notoriety in the most public manner possible, by presenting a petition to the Parliament of Canada, and to His Excellency in Council, hypocritically professing his regard for the purity of the administration of justice—that which is no pleasure, becomes a duty, public considerations and private character are involved, and demand the exposure of the moral assassin.

He was not sought. He has forced himself into notoriety. His carrion character, shunned by the dog and the crow, is too repulsive to be long kept under attention. Let him go. I leave him to His Excellency in Council to deal with as he deserves.

To me it seems hard that I should, in my case, be subject to this prosecution, and by such a person.

I came to this Province at a time when everything, political and judicial, was in an unformed and unsettled state. The Statute-book, relating to property and civil rights, was disfigured with all sorts of incongruous legislation; the powers of the Court were ill defined; there were no settled rules of pleading, practice or procedure; the bills of costs allowed were something frightful; and aggravating all this (with one or two exceptions) was a profound ignorance of English jurisprudence.

After surveying the situation, I commenced carefully and cautiously laying the foundation of our present judicial system.

I came here in June, 1874. In the July following, I prepared, and induced the Legislature to pass, 38 Vic., chap. 12, which is very comprehensive, and constitutes the chief corner-stone of our present judicial system. Under it, I made rules and established a proper tariff of fees. This action, at first, was met with strong opposition from the profession. This action, on my part, at once placed the practice in the Courts, in theory, after the model and form of that of the Courts in Westminster Hall, and the Court of Chancery, in England, as it was on 15th July, 1871, except as altered or changed by the Legislature or rules of Court. At law, in matters of practice and procedure, Archbold's Practice and Chitty's Forms became recognized authorities; and the decisions of the Superior Courts in England, as contained in the authoritative reports, governed in matters of law.

I introduced legislation, and a body of rules, placing the practice of the Court, on its equity side, on an easy, intelligible and inexpensive footing.

I kept a constant and watchful eye over legislation, affecting the law, procedure and practice of our Courts in civil matters.

I compiled and prepared, and after two unsuccessful efforts in two successive sessions, finally succeeded, in 1879, in inducing the Legislature to pass the County Courts Act, which, embracing as it does a code of law and system of practice and procedure for causes of action within the jurisdiction of the County Courts, has not an equal, much less a rival, in the British Empire.

During the past two years, I have alone, in addition to all my other duties and labors, revised and consolidated the Statutes of Manitoba, from 1871 to 1880 inclusive, and have myself read the entire proof in printing; and they are now published; and the law of the land—a work of no inconsiderable labor; and, I think, the consolidated Statutes of Manitoba—in the revision of which abnormal legislation was excided—present a fair body of statutory law.

All the decisions, involving dispute or controversy of fact or law, have been given in writing; and the law and practice of the Courts are that of the Superior Courts in England, which has how become fixed and inextricably interwoven into our whole judicial system; but the transition and changes were so gradual and facile that they did not attract observation, and seemed to be, and in fact were, the natural outcome of the Act 38 Vic, chap. 12, and subsequent Acts, which I prepared and the Legislature passed; until now, I am bold enough to say, we have a judicial system, according to which there is administered pure and impartial justice to all classes of persons, according to law, the superior of which cannot be found within the British Empire. It may appear egotism in me, nevertheless I shall state the fact. I, in seven short years, amid great difficulties and embarrassments, have laid this foundation, and on it, reared this superstructure.

No one who knows anything of the expense of living in this country will say that I have been adequately paid. Had not the Government generously given me some extra work in connection with the Land Office, which has brought me in something additional to my salary, with the most pinching economy I could command I do not see how I could have got along.

But this is nothing. I have made no account of it. It has not troubled me. It has never been in my mind except interjected by importunate creditors or unwelcome maturities.

Cupidity, in respect of property or money, has not been a frailty of my nature.

I am now aged, grown gray in the service of my country, but not rich. I have no worldly possessions, but I have that which, in my estimation, far surpasses any such considerations—a consciousness of having, to the best of my ability, under all circumstances, striven to do my duty; and my aim has been to leave behind me, not money or lands, but a pure and unsullied reputation, in my private relations with men and in my public and official capacity, and, above all, my aim has been to lay the foundation and to rear thereon the superstructure of a wise and pure administration of justice, and I think I have accomplished the object at which I have aimed.

No ancient devotee of the Christian religion could have been more single-minded, zealous and self-sacrificing in the propagation of his faith than I have been in my efforts to achieve that which I have regarded as the last and crowning act of my earthly career—the establishment and consolidation of a pure and enlightened system of jurisprudence in Manitoba.

With such a life and such a record—with such aims and aspirations—with such services and labors, evidenced by such facts, manifest to all, is the reputation and the sacred character of a high judicial officer to be subject to the irresponsible and lying imputations of such men as purport to have subscribed this petition, every word of which is proved to be false, and are they, under the guise of the right of petition, to slander *ad libitum*, and is there no redress? If this is so it is

Durum! Sed levius fit patientia
Quidquid corrigere est nefas.

I can fully appreciate that it is hard, but I am not prepared to accede to the proposition that there is no remedy.

I humbly ask and implore His Excellency in Council to extend to me that redress which, I cannot but think our excellent constitution affords, in a case of this kind—an outrage committed on an innocent man and a high judicial officer of the Crown.

Raro antecedentem scelestum,
Deseruit pede pœna claudo.

All of which is respectfully submitted.

E. B. WOOD, C.J.